

Capability Performance Policy and Procedure for Professional Services Staff

Introduction

- a) The School is committed to resolving issues related to capability performance in a consistent and timely manner and recognises that managing work performance is essential for individual, team and School success, as reflected in this policy and procedure.
- b) The Capability Performance Policy and Procedure is separate to the Career Development Review (CDR) process, which focuses upon employees' personal and career development. Performance related issues should be dealt with under this policy and procedure, rather than the CDR.
- c) For the purposes of this policy and procedure, 'capability' is defined as a lack of skill or aptitude and not a failure of will on the employee's part to do a good job. Performance issues related to ill-health should normally be referred to the School's Capability Health Policy and Procedure. Issues arising from alleged misconduct or gross misconduct will be more appropriately dealt with under the School's Disciplinary and Dismissals Policy and Procedure for Professional Services Staff. Managers should seek further advice from HR if they are not sure which policy and procedure should apply.

Scope

- d) This policy and procedure applies to Professional Services Staff (PSS).
- e) This policy and procedure does not, however, apply to new employees during their review period with the School. Any such performance issues will be dealt with in accordance the School's guidance on Review Periods procedure(s). (see [Review Periods](#) for further information).

Policy aims

- f) The principle aim of this policy is to ensure that all employees have the opportunity and support to strive to achieve and maintain appropriate standards of job performance. This

policy therefore outlines the types of support which can be discussed and agreed to aid the employee to reach the required standard of performance. As such, the focus should be upon dealing with issues at an early, informal stage wherever possible.

- g) The principle aim of the procedure is to provide appropriate steps for capability performance issues to be resolved as effectively as possible, supported by a fair and transparent process.
- h) The School encourages managers to address issues of competency and skills with the employee at the earliest opportunity, in order to help employees to improve their performance. The role of the manager and employee are set out in the attached procedure.

Policy principles

- i) This policy and procedure has been drafted in compliance with the principles set out in the *ACAS Code of Practice on Disciplinary and Grievance Procedures*.
- j) This policy and procedure should be applied in a non-discriminatory way, in accordance with the Equality Act 2010 and the School's commitment to equity, diversity and inclusion. Where an employee wishes to request a reasonable adjustment this should be submitted to the line manager, where appropriate, to the Chair of the meeting.
- k) The School encourages informal means of improvement in work performance, wherever appropriate, to resolve capability performance issues, ie. as part of normal day-to-day management or in accordance with Stage 1 of the Capability Performance Procedure for Professional Services Staff.
- l) There is no statutory time frame for improvements for under-performance and the timescales for improvement will depend on the individual circumstances, including the employee's role, their seniority, their past performance and the severity of the performance issues at hand. In some cases, a timescale for review of a few weeks may be sufficient. In others, a timescale for review of several months may be more appropriate. The period of review will be communicated to the employee and should be long enough to provide them with sufficient time to attempt to meet the required standard and to enable the manager to assess whether or not the employee has made and sustained the necessary improvements.
- m) Where informal discussions are not effective or appropriate, the School is committed to formally supporting employees on a structured basis, over a period of time, prior to any consideration of dismissal on the grounds of performance. However, it may be fair to dismiss an employee without notice of required improvement should the consequences of a single act lead to a total loss of confidence in the ability of the employee to do their job e.g. errors that could have put the health of others at significant risk or invalidation of a required qualification or professional membership. In such instances the School's Disciplinary and Dismissals Policy and Procedure may be more appropriate process, but advice should be sought from HR in determining the appropriate policy and procedure.

- n) Mediation can be a useful tool in helping both to have an honest and open conversation. If, at any point during the procedure, it is felt that mediation might be of value, this could be considered in addition to the process; e.g. where the manager and individual are unable to develop a shared understanding of the performance issues. Please see [Mediation](#) for further information or contact HR for further advice.
- o) The Employment Rights Act 1996 states that "capability" is a potentially fair reason for dismissal. For the dismissal to be fair, the School must be able to show that it has treated the employee reasonably in taking the decision to dismiss.
- p) If you would like further information or advice on the Capability Performance Policy and Procedure, please contact HR.

Capability Performance Procedure for Professional Services Staff

Roles and responsibilities

a) Employees have a responsibility to:

- accept that their performance should reach a satisfactory level;
- engage with any training, development or other measures identified to help to achieve the required level of performance;
- consider whether it would be helpful to advise their manager of matters, including personal, health, or disability issues, which are affecting their performance and to reflect on the impact of any non-disclosure of pertinent information.

b) Managers have a responsibility to:

- set, communicate and provide feedback on standards of required performance as part of normal management meetings, eg. one-to-ones, CDRs;
- address issues of underperformance promptly maintaining confidentiality and provide appropriate guidance, support, or assistance to help the employee to improve.

This procedure has three stages, outlined below. Managers should seek the advice of HR before commencing any stage of this procedure.

Stage 1 - Informal Action for Improvement

- a) Managers should aim, where appropriate, to seek to address an employee's performance by discussing the issues with the employee and providing necessary support and/or coaching, in order to mitigate the need to use the subsequent stages of this procedure.
- b) Action under this stage should always be a two way conversation between the line manager and employee with the primary objective of supporting the employee, for example with additional training.
- c) There are various ways managers can support staff to improve their performance, such as, but not limited to, on-the-job training, external training, coaching, more regular meetings and recognition as and when their performance improves. The exact types of support will depend on the individual and situation. Further advice on support can be sought from HR.

- d) Though not a requirement, if there are undisclosed matters which are preventing the employee from performing to the required standard, such as a disability or a personal issue, the employee can consider disclosing this to the manager so that any relevant support e.g. a specific piece of equipment or additional flexibility, where needed.
- e) This stage should take place during normal day-to-day line management supervision. These meetings, therefore, will be between the employee and their line manager, without colleague or trade union representation or HR attendance. Employees may, of course, seek advice and support from appropriate colleagues (such as mentors, trade union representatives or staff networks) if they so wish and HR Partners are available as a point of contact and information..
- f) Although this is an informal stage, the aim should be to help the employee to meet the required standard of performance in a structured way. It is important that the specific performance concern(s) are explained to the individual and examples of performance issues are provided as a basis for setting clear and achievable targets for improvement. In many cases, a 'performance development plan' (PDP) should be jointly drawn up that clearly outlines the areas for improvement, agreed objectives and given timescales for improvement. Objectives and outputs should be SMART, i.e. specific, measurable, achievable, relevant and time-oriented.
- g) Crucially, a PDP should also include the support and/or training that the employee can expect to help them receive the required improvement level, as well as the level of monitoring and supervision that can be expected. Not all cases will involve a need for coaching or training, or additional support, but in all cases the employee and manager should consider whether this is relevant.
- h) The PDP will allow the manager and employee to objectively track and measure whether the employee's performance is improving adequately and should be discussed and reviewed regularly.
- i) Normally, this stage can be expected to last up to a maximum of three months, but this can be shortened or extended depending upon the employee's role, the nature of the performance concerns and/or the number of performance issues to be addressed.
- j) Although it is hoped that informal resolution will avoid formal action, for the purposes of fairness and transparency, it should be made clear to the employee at this stage that formal action may be necessary if there is insufficient improvement.
- k) If, after the informal PDP review period has concluded, the employee's performance has improved sufficiently then no further action would be taken at that time under this procedure and the manager will inform the employee accordingly. The manager should keep a record of the PDP and its successful outcome as part of normal supervision notes and records. However, if performance falls again, the manager will need to consider, with advice from HR, whether repeated action under the informal stage of this procedure is the appropriate course

of action, or whether moving to Stage 2 is more relevant.

- l) If, after the PDP review period has concluded, the employee's performance has not improved quite to the required standard, but may do if the review period were extended, then an extension to Stage 1 can also be agreed and the above process would continue until the new agreed, shorter end date.
- m) If, after the PDP review period has concluded, the employee's performance still falls short of the required areas of improvement, the following formal stages should be followed, in consultation with HR.

Stage 2 – Performance Management Meeting

A performance management meeting will be arranged if Stage 1 is not successful. It may also be reasonable to go straight to this stage, without going through Stage 1, where capability concerns are sufficiently serious.

- a) The line manager will convene and lead the performance management meeting. The manager will write to the employee, providing five working days' notice of the time, date, location of the meeting and the name of the HR representative advising on the procedure. The letter will also outline the shortfall in performance and support provided so far, together with any supporting documentation such as a PDP.
- b) The employee shall also be advised of their entitlement to be accompanied at the meeting by either a work colleague or trade union representative. The companion will be able to confer with the employee during either the Stage 2 or Stage 3 meeting, as both are deemed to be formal meetings, and will be allowed to address the meeting in order to put forward and sum up the employee's case, respond on the employee's behalf to any view expressed at the meeting and ask questions for clarification of any witnesses. Employees, not companions, will be required to answer direct questions put to them during the meeting.
- c) The circumstances of any action to be taken against a representative of a recognised trade union will be notified to a full-time trade union officer.
- d) Solicitors, family members and all other non-employees will be excluded from the meetings, unless there is a duty to make reasonable adjustments, e.g. for a disability. Requests in such circumstances for additional or alternative representation should be submitted to the Chair of the meeting for consideration. However, further advice should be sought from HR in such circumstances.
- e) Employees are expected to attend all meetings requested of them under any stage of this procedure, irrespective of whether they agree or disagree with the concerns relating to their performance. Unreasonable refusals to attend, or repeated instances of failing to attend, may result in the procedure being continued in absence of the individual.
- f) If an employee's chosen companion is not available at the time proposed for the meeting, the manager should postpone to a time given by the employee provided that the alternative time is both reasonable and normally not more than five working days after the date originally proposed. If the chosen companion is not available within this time frame, an alternative should be sought by the employee.
- g) The manager will be accompanied by a member of HR to provide advice on procedural matters, who may ask questions for clarification. A second member of HR may also be present to take a written record of the meeting. Electronic recordings are not permitted, though employees and/or companions are welcome to take their own written notes.

- h) The line manager will outline the purpose of the performance management meeting when it commences. Normally this meeting will:
- i. Provide an opportunity for the manager and employee to discuss formally the expected standard of work required; the current shortfall; and, what support and training has been given so far.
 - ii. Provide the opportunity for the employee to discuss a relevant explanation of any unknown reasons which may be the cause(s) of the performance issue or simply to comment further.
 - iii. Provide an opportunity for both the manager and employee to discuss the performance issue(s) formally, exploring how they may be addressed and the types of support needed.
 - iv. Discuss and formally note how improvement in the employee's performance will be monitored and assessed and what time scales will apply.
 - v. Discuss and agree a reasonable review date whereby improvement in performance should be seen. The review date will usually be between one and three months, but this will depend upon the nature of the role, its seniority and the number and severity of issues to be addressed.
 - vi. Confirmation that the employee's performance will be monitored regularly throughout the whole period and, if the performance does not improve or is not maintained, it may be necessary to take further formal action. Further formal action could include the following stage of this procedure, at which point termination on the grounds of capability may be considered.
 - vii. It should also be confirmed that if, in the opinion of the line manager, the employee's performance deteriorates further during the review period, Stage 3 of this procedure may be convened before the end of the Stage 2 review date.
- i) After the performance management meeting, the manager will write to the employee confirming what was agreed during the meeting, namely; the performance issue(s) discussed; standards to be achieved, how these will be measured and by when; any agreed training and support; the possibility of progression to the next stage of the procedure if the required standard is not met and the possible outcomes of this stage. This may or may not include a structured Performance Development Plan (PDP), as under Stage 1, depending upon the breadth and depth of the performance concern(s) at hand.
- j) The manager and employee are jointly encouraged to regularly review and monitor progress against the measures agreed in the performance management meeting and ensure that any agreed training and support commences in a timely fashion.
- k) If the performance improves by the deadline, the manager will write to the employee confirming this and informing the employee that Stage 1 of the procedure has been concluded. The letter should also note that their performance will continue to be monitored for a period of 12 months in order to ensure that the performance is maintained, via the usual supervisory methods. If the performance falls within the 12 months, Stage 2 may need to be resumed or Stage 3 may need to commence depending on the seriousness of the

performance issue.

- l) On occasion, e.g. where significant mitigating circumstances have disadvantaged the employee's ability to improve; or there has been some improvement but not quite to the required standard, it may be possible to reconvene the performance management meeting under Stage 2, with a shorter second Stage 2 review period a likely outcome.
- m) If, however, it is clear at the end of Stage 2 that the employee's performance has not improved sufficiently and/or not maintained then the manager should seek the advice of HR. Normally, the manager will then inform the employee that the matter will be moving to a Stage 3 Capability Performance Hearing, which will be usually led by the line manager's manager or suitable peer.

Stage 3 – Capability Performance Hearing

- n) The Capability Performance Hearing is the last stage of this procedure and will normally be chaired by the line manager's manager or a suitable peer, with the support of a member of HR and a note taker. Employees may request that an alternative chair be considered by providing a reasonable explanation as to why the line manager's manager may not be impartial, eg. if they have previously been involved in the case.
- o) Normally, one or all of the preceding stages of this procedure will have been followed. However, it may be necessary to go straight to this stage if the employee's capability results in, for example, a fundamental loss of confidence, not better dealt with under the School's Disciplinary and Dismissals Policy and Procedure for Professional Services Staff.
- p) Before the Capability Performance Hearing commences, the line manager will complete a report outlining the case in detail which will be circulated five working days prior to the meeting.
- q) The employee will receive the same written notification and right to be accompanied, as noted in Stage 2. However, this letter will note that a possible outcome of a Capability Performance Hearing is dismissal. In addition, the line manager and employee will both be given the opportunity to provide any supporting documentation and call any witnesses, if relevant.
- r) At the hearing, the Chair will explain the purpose of the meeting, introduce the attendees and outline the procedure and the role of the companion. The line manager will then present their case. The employee or companion will then be invited to respond to the performance issues.
- s) During the course of both presentations and at their conclusion, the Chair may question both parties for the purpose of clarification. The line manager and employee may also question the other for the purpose of clarification, when invited to by the Chair. Both the

manager and employee shall be given the opportunity to sum up, with the line manager's summing up being given last.

- t) Witnesses may be called to support the respective cases, either during their presentation or after questioning has taken place. Witnesses may only be present for the period of their statements and questioning. They will be questioned first by the person who called them, then in turn by the other side, the Chair and the HR representative, if necessary. The Chair of the meeting may call further witnesses, at any stage of the meeting, for the purpose of clarification.
- u) The meeting will then be adjourned while the facts of the case are considered, and a decision made by the Chair. The meeting shall normally be reconvened for the decision to be given orally to the employee.
- v) The possible outcomes of Stage 3 are:
 - i. A further period of review;
 - ii. redeployment within the division, department, institute, centre;
 - iii. demotion;
 - iv. dismissal.
- w) The employee should receive written notification of the outcome within, normally, five working days of the formal hearing; this notification shall inform the employee of their right of appeal, referring the employee to the [Appeals Procedure](#).

Dismissal

- a) Where an employee's contract of employment is terminated as an outcome of this procedure, termination shall be with immediate effect with full contractual pay in lieu of notice and payment for annual leave accrued but not taken.

Appeals and grievances

- a) Where a grievance is raised prior to the outcome of the Capability Performance Procedure it will normally be considered in accordance with this procedure, alongside other evidence.

Employees are entitled to appeal against the outcome of any of the formal stages of the Capability Performance Procedure by using the Appeals Procedure for Professional Services Staff. Where a grievance is raised after a hearing or where a decision has been made it will normally be considered under the Appeals Procedure for Professional Services Staff.

Information and advice

- a) To ensure consistency of the application of this procedure, managers should seek the advice from HR before invoking this procedure. .

HR can provide general advice to employees on procedures but not specific advice relating to individual circumstances. Should an employee need assistance to prepare for a formal meeting, advice can be sought from a trade union representative or external organisations such as Acas.

- b) Employees may also find it helpful to seek general support from a [School network group](#).

Review schedule

Review interval	Next review due by	Next review start
2 years	Sept 2020	Jun 2020

Version history

Version	Date	Approved by	Notes
1	Sept 2018	JNCC	

Contacts

Position	Name	Email	Notes
abc	abc	abc@lse.ac.uk	abc

Communications and Training

Will this document be publicised through Internal Communications?	No
Will training needs arise from this policy	No
If Yes, please give details	