



STRANMILLIS UNIVERSITY COLLEGE
A College of Queen's University Belfast

CAPABILITY PROCEDURE



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1. Principles

Objective and scope

- 1.1 Whilst the University College's recruitment and selection procedures, appraisal and staff development provisions endeavour to ensure that employees have the skills and attributes necessary to meet the standards required in their post, issues of capability may arise for some staff during the course of their employment.
- 1.2 The Capability Procedure is intended for use when an employee's inability to meet the standards required is not due to misconduct. Therefore it addresses the 'inability' rather than the 'refusal' to perform to the standards required of the post; the latter of which is within the remit of the Disciplinary Procedure. If during the course of capability process there is evidence that the issue is one of misconduct, the Capability procedure will be terminated or suspended, and the Disciplinary procedure will be initiated.
- 1.3 A probationary review may indicate a mismatch in the skills of the new employee and the needs of the post. It is important that all employees are clear on standards of performance expected of them but this is of particular importance in respect of new employees. Regular monitoring of performance of new employees is essential to identify and address problems quickly.
- 1.4 Maintenance of acceptable performance standards is also required of all staff once they have passed the probationary period and throughout their employment with the University College. In order to make a determination that an employee is not performing to an acceptable level it is essential that the employee has been informed of and understands what is required of them.
- 1.5 There are many reasons why an employee may present with capability issues, for example;
 - due to changes in their personal circumstances
 - changes in their job.
 - lack of capability/skills
 - lack of capability due to illness
 - lack of capability due to disability (There is a statutory requirement to seek reasonable adjustments in the case of employee who has a disability)

1.6 The following principles will apply:

- a. The employee is aware of the standards of performance expected.
- b. The employee is made aware of any shortfall as objectively as possible, and at the earliest opportunity, with advice given as appropriate to help facilitate improvement.
- c. The employee is given reasonable assistance and support to enable him/her to meet the standards.
- d. The employee is given the requisite time to make the necessary improvements.
- e. The employee is made aware of the consequences of not meeting the standards.

Written Records

1.7 Written records will be held of meetings relating to the issue. After each meeting, notes of that meeting will normally be prepared by HR and circulated for agreement. Two copies of meeting records will be provided to the employee, one of which the employee may distribute to their chosen companion should they so wish.

Role of Human Resources

1.8 Human Resources staff can provide advice on procedure to managers and/or staff. In meetings, the HR representative will normally take notes and advise on procedure but will not be involved in decision making. The HR representative will also assist the Head of Department (or nominee) in compiling any written records at any stage of the process.

Right to be Accompanied

1.9 Employees have the right to be accompanied at any formal capability meeting by:

- a trade union official who is employed by a trade union; or
- a lay trade union official, as long as he/she has been reasonably certified in writing by his/her union as having experience of, or having received training in, acting as a worker's companion at employee hearings. Certification may take the form of a card or letter; or
- a fellow University College employee.

1.10 This procedure may be varied where the University College has evidence that it is necessary in order to ensure that the procedure followed is fair. Any such changes will be subject to consultation with the parties involved with a view to finding agreement on a way forward. The University College reserves the right to digress from this procedure in instances where it may be inconsistent with its legal obligations as an employer and/or it may be inconsistent with the legal rights of the individual employee.

1.11 This procedure has been agreed with the University College's recognised trade unions. It forms part of each employee's terms and conditions of employment.

2. Managing Capability Informally

2.1 The day-to-day supervision of individuals and teams by their immediate superior represents the essence of performance management. The Head of Department or nominee should attempt to resolve performance shortcomings through day-to-day management practices. It is important that they do not "save up" issues to be addressed through the formal procedure.

2.2 The aims of day-to-day informal performance management are to:

- demonstrate an active interest in the performance of individuals and teams for motivational reasons;
- provide feedback on exemplary performance at the time that it occurs, thereby reinforcing it;
- provide feedback on instances of unsatisfactory performance by explaining the problem, listening to the individual's side of the story, and explaining what improved performance should look like and how it can be achieved; and
- ensure that remedial action to improve specific instances of unsatisfactory performance is arranged - where, for example, formal training is involved.

3. Formal Procedure Stage 1: Initiating Formal Procedures

3.1 Where a Head of Department (or nominee) has evidence of a pattern of performance below the standard required, they should hold a meeting with the employee at the earliest possible opportunity to ascertain the circumstances. This discussion should re-affirm to the employee what standards are expected of the individual, and identify any shortfall as objectively as possible.

3.2 The employee will be offered reasonable support and assistance to address the capability issue. Such support may include use of procedures available under the University College's flexible working arrangements, provision of additional training, mentoring, counselling or other reasonable steps that might be taken to improve performance and help the employee to reach and maintain the standards required.

3.3 The employee and Head of Department or nominee should develop and agree an action plan setting out the steps that will be taken to make the necessary improvements. However, if the employee fails to agree to this, the Head of Department or nominee should issue to the employee the expected standards to be attained and the target dates, giving a reasonable period of time for the employee to improve.

3.4 These arrangements will be confirmed to the employee in writing and will include:

- a. The agreed performance standards Identification of the performance standards which are evidenced by management to be unsatisfactory
- b. The support, including training and development (which may include mentoring and working with others) and access to specific programmes which was agreed in an attempt to improve the employee's performance

- c. Why it is considered that the performance standards being attained remain unsatisfactory, or why it is considered that performance standards have improved sufficiently
- d. Correspondence with the member of staff and notes of any meetings.
- e. Timescales for reviews

This information is required to ensure that the employee has a clear record of what has been agreed, what is required, the timescale involved and the support available. The information is also required to ensure that due consideration can be given to all of the factors appropriate to the case.

- 3.5 The period of review will be dependent upon the objectives and targets set but should not normally be less than 3 months. During this stated period the Head of Department or nominee and employee should meet regularly to review and support progress against the established course of action and timescale.
- 3.6 The employee should also be advised that, should the issues identified not be addressed and resolved by the agreed course of action and within the timescale set, then it will be necessary to invoke the next stage of this procedure

4. Formal Procedure Stage 2: First Review

- 4.1 Should there be evidence of no improvement or insufficient improvement over the period of time set formal review meeting between the employee and the Head of Department or nominee will be held. The employee will be notified in writing of the date of the formal meeting giving normally at least ten working days' notice (or less by mutual agreement). The letter will also set out the nature of the meeting, and the reason/s why the employee's performance is deemed to remain unsatisfactory.
- 4.2 The member of staff may normally request one adjournment of this formal meeting on the grounds that they are unable to arrange representation for a meeting, or that on reasonable grounds they require more time to prepare their case. Any adjournment should be of reasonable duration.
- 4.3 This meeting will:
 - a. explain clearly the shortfall between the employee's performance and the required standard.
 - b. obtain the employee's commitment to reaching that standard.
 - c. Identify the causes of poor performance and to determine what if any remedial action (e.g., training, retraining, support, etc.) can be given.
 - d. agree a reasonable time period for the employee to reach the standard, and agree a review date and on a monitoring system for that period
 - e. tell the employee what will happen if the standard is not met.
- 4.4 A written record of the formal meeting will be made clearly indicating the outcome of the meeting in respect of the above points. The employee will be provided with a copy of the record. The date of the next review meeting will also be stated, and this meeting will normally take place 6 – 8 weeks (or an appropriate timescale relating to the actual activities, particularly in relation to research) from the date of the meeting.

- 4.5 Where a monitoring system has been put in place, a written record should be made by the Head of Department or nominee of any assessment made during the period. The employee should also be made aware of poor performance or improvements during the review period rather than waiting for feedback at the formal review meeting.
- 4.6 If the required improvement over the period of time set has been attained the Head of Department or nominee will meet with the employee to inform them accordingly, and this will be confirmed in writing to the employee within 5 working days of this meeting.

5. Formal Procedure Stage 3: Second Review

- 5.1 If there is evidence that the progress expected to achieve the standards required has not been made and no reasonable explanation has been provided, the Head of Department or nominee will inform the employee that the matter is now more serious. The Head of Department or nominee will write to the member of staff setting out why performance remains unsatisfactory, inviting the member of staff to a meeting to discuss the issue at which they may be accompanied by a representative of a recognised trade union or University College colleague. They will be informed of that right and the nature of the meeting.
- 5.2 In addition to identifying the performance standards to be attained, the employee will be informed of the consequences up to and including dismissal, if no improvements are made and the date of the next review meeting which will normally take place 6 – 8 weeks thereafter (or the appropriate timescale relating to the actual activities, particularly in relation to research).

6. Stage 4: Formal Panel Review

- 6.1 Normally, 6-8 weeks (or the appropriate timescale relating to the actual activities, particularly in relation to research) after the meeting referred to at 4.2 above, a Formal Review meeting will be held. The reviewers will normally be two managers normally of at least the level of the manager who dealt with the previous stages and a Human Resources representative (the Review Panel).
- 6.2 The employee will be notified of the date of the formal review meeting, giving normally at least 10 working days' notice to allow the employee to arrange to be represented by a University College colleague or trade union representative (or less by mutual agreement). The employee will also be informed that the matter now constitutes a capability issue which may result in dismissal.
- 6.3 The Review Panel and employee will be provided with a written performance assessment by the Head of Department or nominee of the employee's performance during the period (including any relevant evidence) with a statement of one of the following:
 - a. That the employee has made some improvement but that the required standard of performance has not yet been met.

- b. That there has been no significant improvement and that consideration may be given to dismissal in the case of an employee who is still in his/her probationary period, or an offer of redeployment or downgrading, or dismissal, in the case of an employee already confirmed in post.
- 6.4 The Review Panel and the Head of Department or nominee will be circulated with any relevant documents which the employee wishes to rely on and which the employee or his/her representative has supplied to the Human Resources Department at least 5 working days in advance of the meeting.
- 6.5 At the Formal Panel Review Meeting the Head of Department or nominee will present the performance assessment giving evidence in support. The evidence provided will be linked to the criteria discussed at the previous meeting and stated as objectively as possible.
- 6.6 The employee or his/her representative will also be given an opportunity to put his/her case and to present evidence in support of his/her position.
- 6.7 The Head of Department or nominee and the employee and his/her representative will withdraw while the panel considers its decision.
- 6.8 The member of staff should attend the hearing but the hearing may proceed in their absence where the Review Panel considers that such absence is unreasonable in the circumstances.
- 6.9 The Review Panel will give its decision in writing. The decision will be one of the following:
 - a. Where there has been some improvement but the standard has not been met, or where new issues have arisen during the review period, a further review period may be set. The degree to which a review period can be extended will be determined by factors such as length of service, personal circumstances and the likelihood of further review providing the necessary improvement. The nature of the work and the impact of poor performance on service provided will also be taken into account. Any subsequent review meeting will have the status of a Formal Review Meeting under this procedure and the Review Panel will normally be the same.
 - b. Where there has been no significant improvement but this is due to mitigating circumstances and the Review Panel considers it is reasonable, balancing the interests of the employee and the needs of the University College, to set another review period, such a period will be set. Any subsequent review meeting will have the status of a Formal Review Meeting under this procedure and the Review Panel will normally be the same.
 - c. Where there has been no significant improvement, whether or not this is due to mitigating circumstances and the Review Panel consider that it is not reasonable, balancing the interests of the employee and the needs of the University College, for another review period to be set.

- i. the Review Panel may recommend that the employee be redeployed to a post at the same grade or downgraded to a lower grade. The Review Panel may ask the Human Resources Department to report to it on any available post at the same or lower grade to which the employee could be redeployed. It may adjourn the Formal Review Hearing for this purpose and reconvene it normally within 15 working days. If such a post or posts are identified the employee will be given the choice of taking any such post or being dismissed. If no such posts are identified the employee will be dismissed.
- ii. the Review Panel does not consider that the employee should be redeployed, the employee will be dismissed.
- iii. In cases involving permanent staff undertaking new roles, the University College will normally (but not automatically) seek to return the individual to their previous position if feasible.

6.10 The Review Panel will provide their final decision in writing giving reasons including where the required improvement has been made. This will be provided to the employee normally within 3 working days of the conclusion of the hearing or any adjourned hearing. The Head of Department or nominee will also be informed of the Review Panel's decision.

6.11 Where the Review Panel decision is that the employee should be dismissed, the dismissal will take effect in accordance with the statutory dismissal procedure taking account of an individual's right to notice under their contract of employment and their right to appeal. The employee will be informed in writing of the reason/s for dismissal, and of the right to appeal. An individual may request pay in lieu of notice.

6.12 The University College reserves the right to place the employee on paid suspension/leave, or amend their duties, during the notice period.

7. Appeal

Lodging an Appeal

7.1 The decision of the Review Panel may be appealed normally on the grounds specified in paragraph 8.3.

7.2 The employee should submit an appeal in writing to the Human Resources Department normally within 5 working days of receipt of the written decision of the Review Panel. The appeal should state the grounds on which it is made.

Grounds for Appeal

7.3 Grounds for appeal against a decision of a Review Panel will normally come under one or more of the following headings:

a. Further evidence not previously considered at an earlier stage

Where the employee can demonstrate that certain material evidence relating to his/her performance was not available or could not have reasonably been made available to those conducting the performance review before the Review Panel reached its decision.

b. Process or procedural aspects

Where an employee can identify material issues pertaining to incorrect or inappropriate use of this procedure which may have influenced the outcome.

c. Final decision not appropriate

Where the Review Panel's decision is inappropriate in light of the findings of the evidence and/or taking any mitigating circumstances into account.

Appeal Hearing

7.4 The Appeal Panel will normally be three personnel of at least the level as the managers who imposed the sanction and who have not been involved to date in the Capability process. The appeals panel may involve members of the Governing Body.

7.5 A Human Resources representative may be present to provide advice to the Panel.

7.6 Where the grounds of the appeal are not clear the Panel may ask for written clarification.

7.7 The employee will be notified by the Human Resources Department of the date of the Appeal Hearing giving at normally least 5 working days' notice and will be informed of his/her right to be represented by a trade union representative or University College colleague.

7.8 The hearing of the appeal should normally take place within 10 working days of the receipt of the appeal by the Human Resources Department or sooner by mutual agreement. In exceptional circumstances or by mutual agreement this period may be extended. Any such extension should be of reasonable duration.

7.9 The Appeal Panel will consider submissions and representations from the employee and seek whatever clarification is necessary from any of those involved in the earlier stages to determine if the decision of the Review Panel is unsound on any of the grounds specified.

Decision of Appeal Panel

- 7.10 The Appeal Panel has the authority to confirm, set aside or alter the decision of the Review Panel. The Appeal Panel will make a written decision giving reasons. The Human Resources Department will send this to the employee within 5 working days of the Appeal Hearing.
- 7.11 In the event that a decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. His/her continuous service will not be affected. Where the decision involves a variation of the action taken by the Review Panel the Appeal Panel should state the reasons for it and the operative date.
- 7.12 The decision of the Appeal Panel is final.

Approved by Governing Body: 25 June 2013

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For distribution to: All Staff