

# UNIVERSITY OF ULSTER

## CAPABILITY PROCEDURE

### 1. PRINCIPLES

- 1.1 Whilst the University'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 during the course of employment for some members of staff.
- 1.2 This Capability Procedure is intended to provide support to help address an employee's inability to meet the standards required in their post. Therefore it addresses the 'inability' rather than the 'refusal' to perform to the standards required of the post; the latter of which is the remit of the Disciplinary Procedure. There are many reasons why an employee may present with capability issues, for example because of changes in their personal circumstances or because of changes in their job. In dealing with such cases the University will pay due regard to the person's individual circumstances in seeking to strike a balance between the capability of an employee to adapt to circumstances and the requirement of the University to have work done to the necessary standard within a reasonable time.
- 1.3 The Probationary Process is designed to assess the 'fit' of an individual to the requirements of a post over a defined time period. As such a probationary period may indicate a mismatch in the skills of the new employee and the needs of the post. Capability/performance issues which may arise during the probationary period will be dealt with under the probationary process.
- 1.4 Timescales in the Capability Procedure may vary as they depend on the particular circumstances of each case but typically the informal and formal process should be dealt with in a six month period. However the following core principles apply in all circumstances:
  - 1.4.1 The employee is made aware of the standards of performance expected, this should commence at the induction stage and continue throughout the period of employment with the University. The roles and responsibilities as outlined within the Job Descriptions and/or Generic Role Profile attached to an individual's post should be used to inform the process.
  - 1.4.2 The employee is made aware of any shortfall as objectively as possible and at the earliest opportunity.
  - 1.4.3 The employee is given reasonable and sufficient assistance and support to enable him/her to meet the standards.
  - 1.4.4 The employee is given reasonable and sufficient time to make the necessary improvements.
  - 1.4.5 The employee is made aware of the consequences of not meeting the standards.

- 1.5 This procedure may be varied where the University considers that it is necessary in order to ensure that the procedure followed is fair. Also the University 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.
- 1.6 Where an employee has a disability which may impact on his/her work performance the University will give due regard to requests for reasonable adjustment(s) in line with the University's Disability Policy/Procedures and the requirements of the Disability Discrimination Order.

## 2. INITIAL INFORMAL MEETING

- 2.1 Where a manager/supervisor becomes aware of a capability/performance issue below the required standard by an employee they should hold an **informal** discussion with the employee at the **earliest possible opportunity** to ascertain the circumstances. This discussion should re-affirm to the employee the standards that are expected of them in the post and identify any shortfall as objectively as possible. The employee should be offered and provided with support and assistance as necessary to address the capability/performance issue(s). Indeed employees should be encouraged to highlight such issues to their line managers at the earliest possible opportunity through this Procedure or under the DAR Procedure. Typical support may include additional training, mentoring, counselling (from properly qualified personnel) or any reasonable step that might be taken to improve performance and help the employee to reach the standards required. The manager/supervisor will establish an agreed appropriate course of action and a time period with the employee to afford the opportunity for improvement and will communicate this to the individual in writing. During the established time period there will be regular review of progress against the established course of action. Also the employee should be advised that should the issues identified not be addressed by the agreed course of action and within the timescale set by the initial informal meeting then it will be necessary to invoke the formal aspect of the Capability Procedure.

## 3. FORMAL MEETING

- 3.1 Should it be determined that there is no improvement or insufficient improvement *relating solely to the ability/knowledge to perform the post* over the period of time set by the initial informal meeting then a formal meeting under the Capability Procedure will be held by the line manager/supervisor with the employee concerned. The employee will be notified of the date of the formal meeting giving at least five working days notice and informing them of their right to be accompanied by a work colleague or trade union representative
- 3.2 The purpose of this meeting will be to:
- explain clearly the shortfall between the employee's performance and the required standard
  - obtain the employee's commitment to reaching that standard

- identify the causes of poor performance and to determine what – if any further interventions/support (eg training, retraining, etc) can be given
  - set a reasonable time period for the employee to reach the required standard
  - establish a Formal Review Date and agree a monitoring system during that period, and
  - tell the employee what will happen if the standard is not met.
- 3.3 A written record of the formal meeting will be made, clearly indicating the outcome of the meeting in respect of the points in 3.2 above. The employee will be provided with a copy of the record. Where a monitoring system has been put in place a written record will be kept of any assessment made during the period. The employee will also be made aware of further capability/performance issues or indeed improvements at the earliest opportunity during the review period rather than waiting for feedback at the Formal Review Date.

#### **4. FORMAL REVIEW MEETING**

- 4.1 A Formal Review meeting will be held as per the review date established under 3.2. The Human Resources Department will determine an appropriate person to conduct the formal review meeting (Review Chair) other than the direct line manager/supervisor. The identity of the Review Chair will be dependant on the member of staff's level of seniority and will normally be of a more senior grade to the employee's direct line manager. The Review Chair will have had no prior involvement in the matter and will be from a different department/school from the employee under review. The Review Chair will be accompanied at the meeting by a member of the Human Resources Department, to service the meeting.
- 4.2 The employee will be reminded of the date of the Formal Review meeting, at least 5 working days in advance of the meeting to allow the employee to arrange to be accompanied by a work colleague or trade union representative. At the same time, the Review Chair and employee will be provided with a written performance assessment by the line manager of the employee's performance during the period with a statement of one of the following:
- that the employee has made the required improvement
  - that the employee has made some improvement but that the required standard of performance has not yet been met
  - that there has been no significant improvement and that the matter will be referred to the relevant disciplinary policy for the staff category under consideration which may result in disciplinary action being taken up to and including dismissal.
- 4.3 The Review Chair and the line manager will be circulated with any relevant documents which the employee wishes to rely on and has supplied to the Human Resources Department at least 3 working days in advance of the meeting.
- 4.4 At the Formal Review Meeting the line manager will present the performance assessment giving evidence in support. The evidence provided will be linked to the criteria discussed at the previous Formal Meeting. The employee will also be given an opportunity to put his/her case. The employee's chosen work colleague or trade union representative may make representations on behalf

of the employee at the meeting and may ask questions but may not answer questions on behalf of the employee.

- 4.5 The line manager and the employee and his/her representative will withdraw while the Review Chair considers his/her decision.
- 4.6 The Review Chair will confirm the outcome of the review meeting to the employee in writing, normally within 5 working days of the conclusion of the meeting or any adjourned meeting. The decision will be one of the following:
  - 4.6.1 Where the required improvement has been made the employee will be informed and encouraged to maintain the improvement.
  - 4.6.2 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 any further review providing the necessary improvement. The nature of the work and the impact of capability/performance issues 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 Chair will remain the same for consistency purposes.
  - 4.6.3 Where there has been no significant improvement but this is due to mitigating circumstances and the Review Chair considers it is reasonable, balancing the interests of the employee and the needs of the University, 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 Chair will remain the same for consistency purposes.
  - 4.6.4 Where there has been no significant improvement and the Review Chair considers that it is not reasonable, balancing the interests of the employee and the needs of the University, for another review period to be set, then the matter will be referred to the relevant disciplinary policy for the staff category under consideration which may result in disciplinary action being taken up to and including dismissal.
- 5.0 This procedure will be reviewed one year from date of implementation or earlier as appropriate in light of any legislative change/case law or substantial concerns raised by the Trade Unions/ Management that may impact upon its effective implementation.