



University of
St Andrews

Capability policy – poor performance

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Purpose	This policy sets out the procedure for addressing concerns around poor performance and persistent short-term absence.

Version number	Purpose / changes	Document status	Author of changes, role and school / unit	Date
1.0	Migration of policies to the Governance Zone	Published	Lisa Stewart, Human Resources	11/06/2019

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1. Introduction

- 1.1 This document sets out the University's procedures to address poor performance due to:
 - Capability;
 - Persistent short-term absence.
- 1.2 The purpose of the procedure is to be supportive if reasonably possible rather than punitive, and it should be recognised that the existence of this procedure is to help and encourage employees to achieve and maintain acceptable standards of performance and to ensure consistent and fair treatment for all.
- 1.3 If performance problems are judged to result from conduct over which the employee has control, the relevant University disciplinary procedure will apply. The fundamental distinction between capability and conduct may be expressed as "can't" as against "won't" respectively, the latter implying some degree of control, deliberation and/or choice.
- 1.4 The processes described in this document deal only with poor performance and persistent short term sickness absence arising from capability and not voluntary action by the individual.
- 1.5 It may be necessary, depending on individual circumstances, to switch from the Capability (Poor Performance) procedure to the [Capability \(Long Term Absence\) procedure](#) and nothing in this procedure will preclude this from happening.
- 1.6 This document is a statement of the University's policy and procedure and does not form part of any contract of employment or otherwise have contractual effect. The University reserves the right, with the agreement of all the parties involved, to make practical/operational changes to these documented procedures to suit individual case requirements or changes in legislation.

2. Poor performance and persistent short-term absence

- 2.1 The purpose of this procedure is to address poor performance and persistent short-term absence. Poor performance is when an employee performs their role to a standard below that which is required by the University. The University will ensure that the standards set are both realistic and measurable. Persistent short-term absence arises where an employee frequently takes time off work for a period of one or more days over a sustained period such that their sickness absence record prevents proper performance of their duties.
- 2.2 The University aims to assist and encourage all employees to achieve and maintain effective standards of performance and attendance. The purpose of this policy is to ensure consistent and fair treatment for all employees experiencing difficulties in performing to a satisfactory standard.
- 2.3 The line manager/Head of School/Unit is responsible in the first instance for addressing poor performance issues when they arise and for taking appropriate action.
- 2.4 Consideration will be given to invoking other University policies where the Manager/Head of School/Unit deems it appropriate.

3. Generally applicable procedures

- 3.1 A member of Human Resources will be in attendance at all formal meetings.
- 3.2 Employees will receive a written invitation to any formal meetings setting out the following information:
- The procedure and the stage under which action is being taken;
 - Evidence/examples of the poor performance/persistent absence;
 - Supporting documentation;
 - Details of any informal discussion(s) so far;
 - The right to representation; and
 - Details of the possible outcome(s).
- 3.3 Formal meetings will be chaired by the employee's line manager or a suitable alternative manager if there are extenuating circumstances provided by the individual. Appeal hearings will be chaired by an appropriate manager who is more senior than the manager who made the original decision.
- 3.4 Where applicable, there must be consideration of the requirements of the Equality Act 2010, which imposes obligations on the employer to take an employee's protected characteristics into account and to make reasonable adjustments.
- 3.5 Other than in respect of an informal discussion under the Capability (Poor Performance) Procedure (stage 1), employees are entitled to be accompanied at any hearing (including any appeal hearing) by a work colleague or Trade Union representative. The person accompanying the employee is entitled to advise the employee, address the hearing and ask questions but not to answer questions on the employee's behalf.
- 3.6 The employee should take all reasonable steps to attend the formal meetings on the date/time stated in the written notification however, the meeting will be re-scheduled to another time if their accompanying person is not available at the chosen time, and the employee proposes a reasonable alternative that is within 5 working days of the original date (this time limit may be extended only by mutual agreement). If the date/time of the meeting is unsuitable to the employee for another reason, they must contact Human Resources which will consider whether the hearing can be rescheduled to a mutually convenient time.
- 3.7 A meeting will only be deemed to have taken place if the employee concerned has had a reasonable opportunity to attend the meeting. Where an employee fails to attend or remain throughout a scheduled meeting through circumstances out with their control, the meeting or its continuation should be arranged for another time. Where an employee fails to attend or remain throughout such a re-arranged meeting without good reason, a decision may be taken in the employee's absence based on the evidence available.

3.8 Stages in the process

- 3.8.1 There are four stages of the procedure:
- Stage 1: Informal discussion
 - Stage 2: First formal warning
 - Stage 3: Final formal warning
 - Stage 4: Dismissal Hearing

3.8.2 The University reserves the right to omit stages depending on the circumstances.

3.9 **Stage 1: Informal discussion**

3.9.1 Where possible, the University aims to address concerns regarding poor performance (capability) or persistent short-term absence on an informal basis before commencing the formal procedure. The employee's line manager or other appropriate manager will meet the employee to discuss the issues. The informal discussion will focus on the following points:

- an explanation of the concerns;
- a discussion of the areas of concern with the employee;
- an identification of any problems or difficulties being experienced by the employee;
- an exploration of possible causes of the problems/difficulties;
- the provision of help and assistance where practicable to improve the situation;
- a full discussion of the possible consequences of there being insufficient improvement in the employee's performance/absence levels;
- the provision of a reasonable amount of time to achieve the improvements required by the University; and
- an arrangement for a review of the employee's progress.

3.9.2 If appropriate, it may be necessary for the manager to consider whether or not the role can be adjusted with the necessary impact on grade being realised or if redeployment to another position of a similar or lower grade may be more suitable.

3.9.3 A note of the meeting and agreed outcomes and objectives will be issued to the employee along with confirmation of the review date.

3.9.4 Following a satisfactory outcome of the informal process, the matter will be considered resolved.

Note: No formal action under this procedure should be taken without discussion with Human Resources.

3.10 **Stage 2: First Formal Warning**

3.10.1 If after informal action the performance/attendance remains below the required standard, then the University can consider formal action.

3.10.2 A meeting will be arranged for the employee and the appropriate manager. The employee will be given at least 7 working days' notice of the meeting. A member of Human Resources will be in attendance.

3.10.3 At the meeting the employee will be told clearly and precisely the deficiencies which have been identified in their performance/attendance, will be given an opportunity to discuss these concerns fully and will be informed of the required improvement. At the meeting the manager will:

- Make clear the area in which the individual's performance is below expectation (explaining the grounds/evidence for this view);
- Seek to identify any problems or reasons for the under performance;
- Set an improvement plan, incorporating targets, standards, deadlines and further support;
- Seek the employee's commitment to reaching the required standards;

- Set a reasonable time frame within which improvement is expected;
- Set up regular progress review meetings during the review period.

3.10.4 The employee may be issued with a Formal Written Warning and a review date will be set to assess whether or not the required improvement has taken place. The review date will depend on the circumstances of the case.

3.10.5 The outcome of the meeting will be formally recorded in a letter to the employee within 7 working days of the meeting. A formal written warning will usually remain on the employee's records for a period of one year after which time it will be removed.

3.10.5 The employee will be notified of their right of appeal.

3.11 **Stage 3: Final Formal Warning**

3.11.1 If performance/attendance remains below the standard required by the University then a second formal meeting between the employee and appropriate manager will take place. The employee will be given at least 7 working days' notice of the meeting. A member of Human Resources will be in attendance.

3.11.2 The Final Formal Meeting will be conducted in the same manner as in the First Formal Meeting, but in addition to the relevant matters listed under the first formal meeting (3.10.3) the manager will:

- Consider the extent to which the employee's performance has failed to reach the set standards. Any shortfall against targets set must be identified clearly and openly and an assessment made of the elements of work that cannot be performed adequately.
- Invite the member of staff to give their opinion on progress made, the support and training made available and any other options they have considered.

3.11.3 Following the meeting the employee may be issued with a Final Written Warning. The outcome of the meeting will be recorded in a letter and issued to the employee within 7 working days of the meeting. The employee will be notified of the improvements required and the timescale for improvement. A date will be set for a further review. A final written warning will normally remain on the employee's record for a period of one year. The employee will also, at this stage, be notified that they may be dismissed if no acceptable improvement in performance is achieved within the given timescale.

3.11.4 The employee will be notified of their right of appeal.

4. **Dismissal hearing**

4.1 **Stage 4: Dismissal Hearing**

4.1.1 If an employee's performance/attendance levels remain at an unsatisfactory standard then dismissal or other appropriate action may be taken. The employee will be given at least 7 working days' notice of the meeting.

4.1.2 A review of the actions taken to date will be considered by the Head of School/Unit/Member of the Principal's Office (where the Head of School/Unit has been previously involved in formal action), another senior member from a different School/Unit (where the employee is an

academic, this will be another academic) and/or a member of Human Resources. Both the manager and the employee will be given an opportunity to state their case.

4.1.3 The University may also consider the offer of a change in job and/or regrading as an alternative to dismissal.

4.1.4 If a decision to dismiss the employee has been made then the employee will be notified by the Director of Human Resources in writing, as soon as reasonably practical and certainly within 7 working days of the meeting. This dismissal letter will include the following:

- The reason for dismissal;
- The date on which the employment will terminate; and
- Confirmation of the employee's right of appeal.

5. Appeals

5.1 The right of appeal

5.1.1 An employee who wishes to appeal any formal action must submit their notice of appeal in writing to the Director of Human Resources within 10 working days of receipt of the written confirmation of the action. The employee should specify the grounds for the appeal against the action taken.

5.1.2 The appeal panel will normally consist of:

- A University representative (the "Appeal Chair") who has not previously been involved in the case or in the case of an academic, an external person drawn from a panel appointed by the Court following consultation with the recognised Trade Unions, which may include Non-Executive members of Court;
- A manager from out with the School/Unit and with no previous involvement in the case;
- In addition, although it is not a requirement for the constitution of the panel, a TU representative from one of the non-represented unions will normally be asked to sit on the panel. This TU representative will be a full panel member;
- A member of Human Resources will be in attendance.

5.1.3 The employee has the right to be accompanied to the appeal hearing by another employee of the University or a trade union representative.

5.1.4 The appeal panel may:

- uphold the original decision;
- annul the original decision and withdraw any conditions/sanctions;
- uphold the original decision in whole or in part but withdraw the original conditions/sanctions in whole or in part and substitute, if relevant, a penalty of lesser or equivalent severity.

5.1.5 The decision of the appeal panel will be final and forms the final stage of the University's procedures.

Note:

- For the purpose of this document a working day is defined as a weekday Monday-Friday but excluding public holidays and such additional days as when the University is deemed closed.

- It is the University's policy not to allow audio or visual recording of meetings or hearings.

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1.0	Migration of policies to the Governance Zone	Published	Lisa Stewart, Human Resources	11/06/2019