

CAPABILITY POLICY

1. Purpose

Employees have a contractual responsibility to perform to a satisfactory level. Where less than satisfactory performance is found to be due to misconduct (e.g. negligence or lack of application) on the part of the employee, then the Disciplinary Procedures would normally apply. However, issues of an employee's capability may arise from time to time where underperformance relates to a lack of the required knowledge, skills or ability, rather than misconduct. If this is the case, then the employee should be given support and reasonable time to achieve the required standard in accordance with the terms of this policy.

This Capability Policy is intended to:

- help secure the required improvement in cases where performance falls short of that expected of a member of staff in a particular post or grade
- help poorly performing staff to become more effective
- where practicable, provide a fair and effective means of securing redeployment to a more appropriate position.

If health or disability issues impact on performance, professional medical advice must be sought prior to holding a capability meeting. Where underperformance arises as a result of absence from work due to ill-health, or it is established that health or disability issues are the cause of the underperformance, the University's Maximising Attendance Policy would normally apply

[http://www.hw.ac.uk/hr/htm/policies/Maximising Attendance Policy and Procedures approved by Court June 2012.doc](http://www.hw.ac.uk/hr/htm/policies/Maximising_Attendance_Policy_and_Procedures_approved_by_Court_June_2012.doc)

It should be noted from the outset that a capability issue is not a disciplinary issue and should not be treated as such.

In managing a capability issue, guidance should be sought from a Human Resources Partner at each stage of the process.

2. Scope

This Policy and supporting procedures apply to all UK based University employees and are designed to ensure that the University's approach to managing capability issues is fair and consistent.

Employees not based in the UK will normally have a separate policy and process due to differing local Labour laws. This will be explicit in the appropriate contract terms and conditions.

This policy does not form part of employees' contract of employment and may be amended from time to time.

3. Key Principles

It is the responsibility of managers to ensure that employees have a manageable workload and that agreed objectives are realistic.

The University's Policy on Equality and Diversity will be observed in relation to all capability related procedures.

The application of this Policy and its supporting Procedures recognise the right of academic freedom as set out in the Statutes and Ordinances.

All employees have the right to be accompanied to a capability meeting or a capability hearing by a work colleague or Trade Union official.

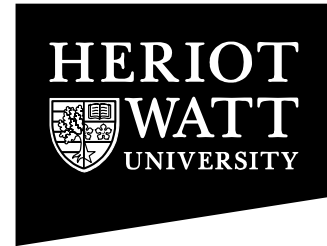
4. Records

At the end of each stage, a complete record of all appropriate documentation generated during the various stages must be passed to the Human Resources Partner. These records will be kept confidential, monitored under equality legislation, and retained for a limited period in accordance with the Data Protection Act 1998 and the University's Records Retention policies.

A summary of all capability hearings, outcomes and actions is maintained and general statistics reported for equal opportunity monitoring and FOI purposes. This summary is kept securely and confidentially with personal data removed in accordance with the Data Protection Act and the University's Records Retention policies.

5. Review

This Policy and its supporting Procedures will be reviewed 3 years from the date of implementation and earlier if legislation dictates. Any proposed amendments will be subject to consultation in accordance with Ordinance 53. Such amendments will be notified to employees through the normal communication channels and/or e-mail. The Policy and Procedure will be maintained on the Human Resources Website.



CAPABILITY PROCEDURES

1. Preliminary Actions

If an employee's performance becomes a matter of concern it should be addressed promptly and action taken in accordance with Appendix A of the Performance Management Policy and Procedures. Only when all stages in that process have been exhausted should action under the Capability Procedures be taken.

2. Capability Review Meeting with Senior Manager

If an employee's performance remains less than satisfactory after all the stages of the process for dealing with underperformance have been exhausted (under Appendix A of the Performance Management Policy, as stated above), then a Capability Review meeting will be arranged. This meeting will involve the employee, their Reviewer, a manager at the next level of authority (normally the Countersignatory) and a representative from HR. The employee should be given at least one week's notice, in writing, of the meeting and given the opportunity to be accompanied by either a work colleague or a trade union representative.

The purpose of the meeting is to discuss the employee's performance in the job, examine the cause of the problem and consider what can be done to improve the situation.

At the meeting the employee's Reviewer will state the nature of the problem and give specific examples of where performance has fallen below the required standard. The Reviewer will also explain what actions have been taken to help the employee improve and what improvement, if any, there has been. The employee will be asked to give their opinion on the cause of the problem and what they think can be done to help.

The senior manager, taking the above into account, will consider what else might now be done to improve the situation and help the employee. This could include, for example, further training/coaching/development, or a change in duties. The senior manager may propose that the previous plan for improvement continue to be followed, with an extension to the timescale for improvement. It might be considered that a new plan for improvement should be drawn up. Consideration may also be given to redeployment to a suitable position, if possible, if it is felt by both the Reviewer and the senior manager that this would be appropriate for the employee. Where redeployment is considered to be a possible solution, advice must be sought from HR regarding the procedures to be followed.

The senior manager must make it clear to the employee that their job is now seriously at risk if the required level of improvement is not achieved and sustained.

At that meeting, a reasonable and realistic timescale for improvement should be agreed and a meeting date set at which progress during this period will be reviewed.

A written note of the meeting will be made and should be signed by the employee, the Reviewer and the Senior Manager as an agreed record.

At the end of the agreed timescale for improvement, the Senior Manager and Reviewer will meet with the employee. If performance has reached the required level and no further action is required, then this will be acknowledged and subsequently confirmed in writing by the Senior Manager and copied to the employee. Where performance is still less than satisfactory, the employee will be advised that they are to be invited to a Capability Hearing, the outcome of which could be dismissal on the grounds of capability.

If at any stage it becomes clear that the underperformance is due to misconduct, rather than capability, then the Disciplinary Procedures should be followed and HR must be consulted before any action is taken.

3. Capability Hearing

A Capability Hearing should normally take place within 2 to 3 weeks of the employee having been advised that a hearing would be convened.

The Senior Manager will, in consultation with HR, appoint a panel to hear the case, which will normally comprise the Senior Manager as Chair and one other independent manager (from outside the normal line management chain) who is at least the same grade as the employee's manager and who has some knowledge of the type of work involved. An HR Partner will also be in attendance

Where specialist technical knowledge is identified as required by the Chair or the independent manager referred to above, an independent arbitrator may be called upon in instances where no appropriate internal expert is available. The relevant Human Resources Partner can help identify an appropriate representative to take this role. In most cases it will be possible for the Head of School, in discussion with HR to determine such appointments. In more complex cases, either a Dean of the University or the Vice Principal or delegated nominee will be consulted to make an appropriate appointment. Where an issue relating to Academic Freedom exists or has been raised by the individual, then a Dean or the Vice Principal or delegated nominee must be consulted and it may be appropriate that a lay member of Court hears the case.

The Panel Chair will invite the employee to the Capability Hearing, confirming in writing the details of the hearing and the panel members.

The employee should be given at least one week's notice, in writing, of the meeting and given the opportunity to be accompanied by either a work colleague or a trade union representative.

Prior to the Hearing, the panel will gather and review all the relevant information including reports from the Line Manager/Reviewer and notes from previous meetings. The employee will also be given a copy of all the information which has been collected, at least one week prior to the hearing.

At the hearing, the employee will be asked to explain their own view of their performance and the actions taken to date to try to address the issues.

A formal note will be made of the hearing and the Panel Chair may wish to appoint a confidential note-taker for this purpose. A copy of the notes from the meeting will be provided to the employee, who may wish to comment on them, but this will not normally delay any decision being made.

The panel will consider the case and decide on one of the following actions:

- if the panel feel that the employee has not had sufficient opportunity to improve then they may offer the employee a further chance to improve, over a defined period (accompanied by relevant training or other support if necessary)
- where the panel feel that sufficient support and time has been given, but the employee has failed to make the required improvements then the panel will dismiss the employee on the grounds of capability

The decision of the hearing will be conveyed to the employee verbally as soon as possible after the hearing and also in writing, normally within 1 week of the hearing.

If the employee is to be given more time to improve, the letter will confirm:

- The reasons why the current performance falls short of the standard expected of a satisfactory performance
- The additional period of time given for improvement and the standards expected
- The training and/or support to be provided
- The frequency of reviews of progress
- The consequences of a failure to improve sufficiently within the defined period (i.e. potential dismissal)

If after a Capability hearing, the panel decides to allow the employee extra time to make the required improvement, the employee's performance will continue to be reviewed, during this period, by the Reviewer in consultation with the Senior Manager. If at the end of this period performance has reached the required level and no further action is required, then this will be acknowledged and noted in writing by the Senior Manager and copied to the employee. If performance has not improved, this will be confirmed to the employee, in writing, by the Senior Manager. The letter will confirm that the Capability Hearing panel will be reconvened to consider the case again. This hearing would normally take place within 1 to 2 weeks of the date of the letter.

If a decision is made to dismiss the employee, then the letter will confirm:

- The nature of the unsatisfactory performance
- The process followed to date

- The fact that the employee is to be dismissed, outlining the relevant notice period
- The employee's right of appeal

4. Appeals

An employee who wishes to appeal against a capability decision, including dismissal, should write to the Director of Human Resources within ten working days, indicating the reason(s) for their appeal.

An appeal hearing is not a rehearing of the original Capability hearing but it will consider those specific areas with which the employee remains dissatisfied. Grounds of appeal will normally be due to further evidence being available which was not previously considered at the original hearing, insufficient consideration of specific factors during the hearing, a flaw in the procedure which could have influenced the final outcome, or where the outcome does not appear appropriate based on the findings of the hearing.

The Director of Human Resources will appoint an appropriate person to deal with the appeal. The person appointed will normally be senior to the original management representative and will be presented with all the material available at the original hearing. Where specialist technical knowledge is identified as required by the appointed Chair of the Appeal Panel, an independent arbitrator may be called upon in instances where no appropriate internal expert is available. Where the appeal relates to Academic Freedom, a Dean or the Vice Principal or delegated nominee must be consulted and it may be appropriate that a lay member of Court hears the appeal

The decision of the appeal will be final.