



Capability (Performance) for Professional Support Staff: Policy and Procedure Document

1. Policy

- 1.1 The School's aim through this policy is for managers to help and encourage employees to achieve and maintain appropriate standards of performance by means of addressing problems informally as soon as they arise.
- 1.2 Where informal action is not effective or appropriate this Capability (Performance) Policy and Procedure is a formal means to enable under-performance issues to be resolved fairly, consistently and in a timely manner.
- 1.3 This policy will be applied in a non-discriminatory way, in line with the School's Equality and Diversity policies.

2. Scope of the procedure

- 2.1 The procedure applies to all Professional Support Staff employed by the London School of Hygiene and Tropical Medicine.
- 2.2 Performance refers to an individual employee's ability to perform the work expected of her/him to the required standards. This may be assessed by reference to skill or aptitude and lack of qualifications may, in certain circumstances, be considered under this heading.
- 2.3 The definition of a manager for the purposes of this procedure is any member of the School with line management responsibility for one or more members of Professional Support Staff.

3. Exclusions

- 3.1 This procedure does not apply to new employees during their probation period of employment with the School, or extension thereof.
- 3.2 This procedure relates to underperformance in terms of job capability that would not more appropriately be dealt with under other procedures. Therefore, it does not apply to:
 - negligence or other forms of misconduct that may be more appropriately dealt with under the Disciplinary and Dismissals Procedure for Professional Support Staff;
 - Underperformance that can be attributed to a medical condition that may be more appropriately dealt with under the Sickness Policy and Procedure.

4. Overseas staff

4.1 It is the intention that this policy will apply to staff working overseas. It may be necessary to adapt these procedures, for example, where attendance at hearings is not practicable these may be carried out via video-link.

5. Roles and Responsibilities

5.1 Employees have a responsibility to:

- Advise her/his manager of any issue that is affecting their performance inside or outside of work, including the impact of personal, health or disability issues.
- Perform her/his duties to the required standard at all times.
- Comply with reasonable instructions.
- Treat all colleagues and managers with respect.
- Not to disclose confidential information.
- Understand that if her/his performance is below a satisfactory level her/his manager has an obligation to address it.
- Comply with any training, development or other measures identified that will enable her/him to reach the required level of performance.
- Participate in annual PDR.
- Identify gaps in their knowledge.

5.2 Managers have a responsibility to:

- Recruit, train and manage staff appropriately, thereby minimising the risk of poor performance.
- Set and communicate standards of required performance during induction and throughout employment.
- Provide feedback on performance to every employee they are responsible for.
- Address issues of performance as soon as they become apparent.
- Provide appropriate guidance, training, support and/or assistance to help the employee achieve the required standard of performance.
- Ensure that the annual appraisal is conducted.
- Ensure that actions taken in respect of an employee's work performance are done sensitively and consistently maintaining confidentiality, dignity and equality of opportunity.

5.3 Human Resources have a responsibility:

- To provide advice in respect of the application of this procedure.
- To support and advise the manager in the process of making an informed, fair and reasonable decision.
- Provide training specific to the application of this policy.

5.4 To ensure consistency of the application of this procedure, managers must seek the advice of their HR Partner before invoking the formal procedure.

5.5 Should the employee need assistance in understanding either the policy or procedure or any documentation in connection with this, he/she should seek advice from his/her HR Partner or trade union representative.

6. Confidentiality and Data Protection

6.1 All those involved in a Capability (Performance) Procedure must keep all information relating to the case confidential. Any inappropriate disclosure of information relating to the case may result in disciplinary action.

6.2 Audio or visual recording of informal or formal meetings is not permitted.

7. Representation

7.1 At each stage of the formal Capability (Performance) Procedure, the employee has the right to be accompanied by a trade union representative/official or workplace colleague. When arrangements for meetings are confirmed, employees are responsible for notifying their chosen representative of the arrangements and notifying the chair of the meeting or the relevant HR Partner of the name of the person accompanying them in advance.

7.2 Capability (Performance) hearings are internal procedures. Therefore, attendance as a companion is restricted to officials of recognised trade unions or employees of the School. Solicitors, family members and all other non-employees will be excluded from disciplinary hearings.

7.3 There is no requirement on a work colleague to accept a request to accompany an employee.

7.4 In rare cases where the School feels that the choice of representative might affect the integrity of the process, this will be discussed with the employee, and the School may request that the member of staff nominate an alternative representative.

7.5 Employees should take all reasonable steps to attend the formal Capability (Performance) Hearing. Should their chosen companion be unavailable on the given date, the employee shall immediately request a postponement by proposing an alternative date and time, which should be within five working days of the given date. Where this is not possible the employee shall choose an alternative person to accompany her/him to the hearing.

7.6 If the reason for the employee or companion being unable to attend the hearing is for reasons that were unforeseeable at the time of arranging the hearing, the employee will be notified of a new date, time and location by the Chair of the hearing. The School reserves the right to hold formal Capability (Performance) hearings in absentia.

7.7 The companion will be able to confer with the employee during the Capability (Performance) hearing and will be allowed to address the hearing in order to put forward and sum up the employee's case, respond on the employees behalf to

any view expressed at the hearing and ask questions for clarification of any witnesses. The companion will not be able to answer questions on the employee's behalf.

8. Timescales

8.1 Whilst every endeavour will be made to comply with the specified timescales, due to the complexity and/or specific circumstances of a case, timescales may be extended. In such circumstances, an employee will be advised of the reasons for the delay.

9. Stages of the process

9.1 Normally, the management of under-performance will be addressed through the stages of the Capability (Performance) Procedure; however, in exceptional circumstances there may be occasions when it is necessary to move directly to stages 1 or 2 of the formal process, for example, where there has been not sufficient progress in the achievement of targets or where performance concerns are sufficiently serious.

10. Informal Procedure

10.1 Normally, cases of unsatisfactory work performance should be raised as part of the management process in order to resolve the issue(s) without recourse to formal action.

10.2 The informal approach is aimed at bringing concerns to the attention of the employee, exploring causes, identifying responsibilities and agreeing actions to be taken. Where there are concerns about an employee's performance, the employee's line manager has responsibility for bringing these concerns to the attention of the employee as quickly as possible.

10.3 The line manager should request that the employee attends a meeting to discuss the performance concerns. This request would normally be in writing, with clear identification of the broad matters for discussion.

10.4 The line manager and member of staff should explore any circumstances, including the work environment, work systems or personal circumstances, which may have contributed to poor performance, identify clear instances of poor performance and determine whether external help is needed to address them.

10.5 The member of staff should be advised clearly of the standard of performance expected of them and should be cautioned that if they do not improve then formal action may be followed under the Capability (Performance) Procedure as set out below.

10.6 Clear targets and timescales for their achievement should be agreed and set. The manager will monitor the employee's performance during the review period and hold regular interim review meetings with the employee.

10.7 The line manager may also issue advice and guidance to the employee and / or provide training or take other informal action.

10.8 The line manager should ensure that they put the outcomes of any discussions in writing to the employee. The line manager should retain any notes of these informal discussions or meetings. A formal review meeting date should be set to review progress against the targets.

10.9 If at the review meeting satisfactory progress has been made the matter will be considered resolved.

10.10 Where at the review meeting it is clear that the employee has made significant progress in meeting the targets set, consideration may be given to extend the period of the review.

10.11 If at the review meeting, the line manager remains of the view that performance has not improved and does not meet acceptable standards and that there are no sufficient mitigating circumstances to explain the poor performance, then the line manager will arrange for a formal hearing to be instigated under the Capability (Performance) Procedure.

11. Formal Procedure

11.1 In considering whether to progress to the formal procedure, the employee's line manager should review any evidence relating to the case, including notes of meetings, agreed targets, where the employee is still failing to meet specific areas, opportunities provided for improvement, and support given.

11.2 Managers should seek advice from HR before invoking the formal Capability (Performance) Procedure.

12. Chair of Capability (Performance) Hearing

12.1 The formal stages of the Capability (Performance) Procedure are designed to allow a case to progress through the normal management chain and therefore, the employee's line manager will normally present the management case at a formal Capability (Performance) hearing and the line manager's manager will normally Chair the Capability (Performance) hearings.

12.2 The Chair of the hearing will be accompanied by a HR Partner acting as advisor.

13. Stage 1 – Formal Hearing (First Written Warning)

13.1 If performance does not meet acceptable standards and coaching or other informal action is not considered appropriate or has not been successful in addressing the problem, the formal Capability (Performance) Procedure should be followed and a Stage 1 – Formal Hearing arranged.

13.2 The employee's line manager will prepare and submit a report to the Chair of the Capability (Performance) hearing, outlining the performance concerns and steps taken to address these to date. A copy of the report will be provided to the employee in advance of the Stage 1 hearing.

13.3 Following receipt of the report from the employee's line manager the Chair will write to the employee, normally within ten working days of receiving the report, giving five days' notice of the hearing to:

- Confirm the date, time and location of the performance hearing.
- Set out the nature of the performance/capability concerns.
- Provide a copy of the report which was produced by the employee's line manager and any additional information.
- Confirm the possible outcomes of the hearing.

13.4 A HR representative should be present to advise on procedure at all stages of the formal Capability (Performance) Procedure.

13.5 The employee shall be advised of his/her entitlement to be accompanied at the hearing by a work colleague or trade union representative. Please see Section 7.0 for information on the role of the representative.

13.6 Should the employee wish to be accompanied or call witnesses, he/she shall provide their HR Partner with the names of his/her companion or witnesses at least forty-eight hours before the hearing.

13.7 The purpose of the Hearing will be to:

- Establish the facts in relation to the underperformance – e.g. lack of understanding of what is required, lack of training/experience.
- To enable the Chair to make an informed decision – e.g. does the employee accept that there is a problem, and is the employee willing to work towards an improvement in performance?
- To afford the employee the opportunity to explain/defend her/his position or raise any mitigating factors.
- To identify what needs to be done to achieve the desired improvement.

13.8 At the hearing the employee's line manager will outline the performance issues that have led to the hearing and the employee will be given an opportunity to state her/his case and raise any relevant factors s/he wishes to have considered.

13.9 Following the hearing, there will be an adjournment, while the Chair reviews the information provided in order to make a decision regarding next steps. The hearing shall normally be reconvened on the same day for the decision to be given orally to the employee; however, if the Chair requires additional time to make the decision, the hearing may be reconvened at a later date to communicate the decision or by agreement the decision will be communicated in writing to the employee. In all cases, the employee will be provided with the outcome in writing normally within 7 working days unless advised by the Chair that a longer time period is required.

13.10 If, in the view of the Chair of the hearing, the employee is unable to provide a satisfactory explanation for the performance shortfall, s/he will be advised of:

- The improvement in performance required.
- Any support to be received and how performance will be reviewed.
- The consequence of not meeting the performance targets.

13.11 **A First Written Warning** will in that case be issued and the above will be confirmed in writing to the employee normally within seven working days. The employee will also be advised of her/his right of appeal. A copy of the letter will be retained on the employees HR file for twelve months, after which it will be removed from the HR file.

13.12 No further action will be taken if the desired improvement has been made within the timeframe prescribed by the manager in the written warning.

14. Stage 2 – Formal Meeting (Final Written Warning)

14.1 If the problem is more serious, or if there has been a failure to meet the performance targets set at the first formal Capability (Performance) hearing within the timescales prescribed, the line manager will arrange a further formal Capability (Performance) hearing with the employee, under stage 2 of the procedure, to take place.

14.2 The Stage 2 formal Capability (Performance) Procedure will follow the same procedure as outlined in Stage 1 of the procedure above (Section 13.0).

14.3 At the hearing the employee's line manager will outline the performance issues that have lead to the hearing and the employee will be given an opportunity to state her/his case and raise any relevant factors s/he wishes to have considered.

14.4 If, in the view of the Chair of the hearing, the employee is unable to provide a satisfactory explanation for the performance shortfall, s/he will be advised of:

- The improvement in performance required.
- Any support to be received and how performance will be reviewed.
- The consequence of not meeting the performance targets, i.e. that the employee may be dismissed if no acceptable improvement in performance is achieved within the given timescale.

14.5 **A Final Written Warning** will in that case be issued and the above will be confirmed in writing to the employee normally within seven working days. The employee will also be advised of her/his right of appeal. A copy of the letter will be retained on the employees HR file for twelve months, after which it will be removed from the HR file.

14.6 A final written warning relating to under performance may be accompanied by the withholding of incremental progression (where the employee is eligible for progression) for the period during which the warning is current. Incremental

progression, where it is due, will resume on the 1st October following the date on which the warning ceases to be current.

14.7 No further action will be taken if the desired improvement has been made within the timeframe prescribed in the written warning.

15. Stage 3 – Formal Meeting (Dismissal)

15.1 If there is insufficient improvement within the timescale prescribed by the Chair following the previous formal stage of the procedure and if the employee continues to perform at an unacceptable level, then dismissal may be considered.

15.2 The line manager shall inform the employee that there is still a concern regarding her/his performance and that the matter will be referred for consideration under Stage 3 of the formal Capability (Performance) Procedure. As with previous stages of the procedure, the employee's line manager will submit a report to the Chair of the Hearing, explaining the performance concerns and steps taken to address these to date. A copy of the report will be submitted to the employee in advance of the hearing.

15.3 The employee shall be advised in writing of the grounds that have led to the hearing being called, including full details of the alleged performance issues. S/he will also be advised that one consequence of the hearing may be the termination of employment.

15.4 The Stage 3 formal Capability (Performance) Procedure will follow the same procedure as outlined in Stage 1 of this procedure (Section 13.0)

15.5 At the hearing the employee will be advised of the performance issues that have led to the meeting. The employee will be given an opportunity to present her/his case and raise any issues s/he wishes to have considered.

15.6 Following the hearing, there will be an adjournment, while the Chair reviews the information provided to determine whether it is appropriate to dismiss, with notice, in respect of the employee's incapability to fulfil the contract of employment.

15.7 On the basis of the information presented the Chair of the Hearing may decide on the following outcomes:

- That there are insufficient grounds to dismiss the employee under this procedure;
- On the imposition, extension or renewal of a warning or final written warning issued under this procedure;
- That the employee should be dismissed on grounds of capability (with appropriate notice)
- That matters should be considered under an alternative procedure.

15.8 The above list is not exhaustive and the outcome may be varied according to the circumstances of the case.

15.9 The hearing shall normally be reconvened on the same day for the decision to be given orally to the employee; however, if the Chair requires additional time in making the decision, the hearing may be reconvened at a later date to communicate the decision or by agreement the decision will be communicated in writing to the employee.

15.10 The employee should receive written notification of the outcome within seven working days of a disciplinary hearing; this notification shall inform the employee of his/her right of appeal along with a copy of the Appeals Procedure.

16. Appeals and grievances

16.1 Employees are entitled to appeal against any formal action taken under the Capability (Performance) Procedure by using the Appeals Procedure for Professional Support staff.

16.2 Where a grievance is raised in connection with the Capability (Performance) Policy and Procedure advice should be sought from Human Resources.

Accessibility

If you require any document in an alternative format, for example, in larger print, please contact Human Resources.

DOCUMENT CONTROL

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