

HUMAN RESOURCES

Capability Policy and Procedure



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Policy

1. LSHTM is committed to developing and maintaining constructive relations with its employees and the purpose of this policy and procedure is to help and encourage employees to achieve and maintain required standards of performance and to ensure that when action needs to be taken, it is applied consistently and fairly in every case.
2. This policy will be applied in a non-discriminatory way, in line with the LSHTM's Equality and Diversity policies.

Scope of the procedure

3. The procedure applies to all staff employed by the London School of Hygiene and Tropical Medicine.
4. Underperformance refers to an individual employee's inability to perform their role to the required standard due to lack of knowledge, skill or ability. Lack of qualifications may, in certain circumstances, be considered under this heading.
5. The definition of a manager for the purposes of this procedure is any employee of LSHTM with line management responsibility for one or more members of staff.

Exclusions

6. This procedure applies to LSHTM employees who have completed their probationary period and been confirmed in their post.
7. 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 Procedure.
 - Underperformance that can be attributed to a medical condition that may be more appropriately dealt with under the Sickness Absence Management Policy and Procedure.

Overseas staff

8. 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.

Roles and Responsibilities

9. Employees have a responsibility to:

- Advise their manager of any issue that is affecting their performance inside or outside of work, including the impact of personal, health or disability issues.
- Perform their duties to the required standard at all times.
- Comply with reasonable instructions.
- Treat all colleagues and managers with respect.
- Not to disclose confidential information about others that could be perceived to breach confidentiality requirements associated with formal disciplinary procedures, and/or data protection policies and requirements.
- Understand that if their performance is below a satisfactory level their manager has an obligation to address it.
- Comply with any training, development or other measures identified such as coaching or mentoring that will enable them to reach the required level of performance.
- Participate in annual PDR.

- Identify gaps in their knowledge.

10. Managers have a responsibility to:

- Recruit, train and manage staff effectively and supportively, 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.

11. Human Resources have a responsibility:

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

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

13. 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.

Confidentiality and Data Protection

14. LSHTM aims to deal with performance matters with due respect for the confidentiality of those individuals involved. All employees must treat as confidential any information communicated to them in connection with a performance matter. Audio or visual recording of informal or formal meetings is not permitted.

Representation

15. 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.
16. Capability (Performance) hearings are internal procedures. Therefore, attendance as a companion is restricted to officials of recognised trade unions or employees of LSHTM.
17. There is no requirement on a work colleague to accept a request to accompany an employee.
18. 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 employee's 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.

Timescales

19. 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.

Stages of the process

20. Normally, the management of under-performance will be addressed through the informal stage of the Capability (Performance) Procedure; however, in exceptional circumstances, e.g., where the alleged capability issue is too serious to be dealt with by informal action it may be necessary to move directly to the formal stages.

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

Informal Procedure

21. 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.
22. 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.
23. 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.
24. 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 additional support is needed to address them.
25. 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 steps will be taken under this procedure if the matter is not resolved.
26. 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.
27. The line manager may also issue advice and guidance to the employee and / or provide training or take other informal action.
28. 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.

29. If at the review meeting satisfactory progress has been made the matter will be considered resolved.
30. 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.
31. If at the review meeting, the line manager remains of the view that informal action has not led to sufficient and sustained improvement in performance following informal guidance, support and advice or where the alleged capability issue is too serious to be dealt with by informal action, and there are no sufficient mitigating circumstances to explain the poor performance, a decision to initiate the formal capability procedure will be made in consultation with their designated HR Partner.

Formal Procedure

32. 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.
33. Managers should seek advice from their designated HR Partner before invoking the formal Capability (Performance) Procedure.
34. The formal capability procedure has two stages: Capability Hearing and Appeal Hearing. Capability sanctions should not be applied until the formal capability procedure has been followed, although any sanction would become effective prior to the Appeal stage but could be overturned on appeal.

Capability (Performance) Hearings

35. 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 hearing. In some cases, in consultation with the HR Department an alternative manager at a similar level will chair the hearing.

36. The Chair of the hearing will be accompanied by an HR Partner acting as advisor.
37. Where a case progresses to a formal hearing (including the appeal hearing), the hearing chair where the subject is an academic colleague will normally be a member of academic staff. Similarly, the hearing chair for a Professional Services colleague will normally be a member of Professional Services staff. Hearing chairs will be of suitable seniority for the individual who is subject to the hearing.
38. For hearings that could result in dismissal, the panel will consist of a Chair assigned by the Director of HR and another manager of appropriate seniority. An HR representative will be present at the hearing to advise on matters of policy and procedure.
39. For hearings with potential outcomes less than dismissal, the hearing will consist of a Chair assigned by the Director of HR. In both cases the Chair will be the ultimate decision maker.
40. The hearing should be held without unreasonable delay while allowing the employee reasonable time to prepare their case. Normally 5 working days' notice of a capability hearing will be given.
41. 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.
42. 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 hearing.
 - Set out the details of the performance/capability concerns.
 - Provide a copy of the report which was produced by the employee's line manager and all information that has been considered.
 - Confirmation of the right to be accompanied at the hearing by a work colleague or trade union representative. See paragraph 15 above for information on the role of the representative.

- Confirmation that an HR representative will attend the meeting to advise on procedure.
43. The Chair will undertake any necessary investigation to ensure that they have all the relevant information and evidence about the alleged shortcomings in the performance of the employee. Any documentation that either party intends to use in the hearing should be submitted to the designated HR representative within a reasonable time of the hearing so that copies can be shared.
 44. Normally witnesses will not appear at a capability hearing. Should the employee wish to call witnesses, they must request permission to do so from the Chair as far in advance of the date of the hearing as possible. Permission will only be granted in the most exceptional cases. Alternatively witness statements may be provided as part of the evidence to be considered (redacted if necessary).
 45. 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.
 46. 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. LSHTM reserves the right to hold formal Capability (Performance) hearings in absentia.
 47. In the unlikely event that it is considered appropriate for an employee to be suspended during capability procedures, for example where the level of competence may impact on students or staff, the fact and conditions of the suspension will be confirmed in a letter to the employee at the earliest opportunity. Suspension is not a disciplinary sanction and every effort will be made to keep the period of suspension to a minimum. Normally an employee will be suspended by the Dean of Faculty/Head of Service area with agreement from the Director of HR or their nominated designate. The employee will be updated periodically about the anticipated length of suspension. Any suspension will be on full pay and the same provisions will apply as those in the disciplinary procedure.

48. Where an employee is an accredited representative of a trade union recognised by LSHTM and is subject to the capability procedure, LSHTM will normally proceed as outlined under this procedure. However, LSHTM will not instigate formal capability proceedings without prior discussion of the matter (with the agreement of the employee), with a full-time official of that trade union.
49. 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.
 - At the hearing the employee's line manager will outline the performance issues that have led to the hearing. The line manager will explain how the employee is underperforming and go through the evidence that has been gathered. The employee will be allowed to set out their case and answer any allegations that have been made. They will also be given the opportunity to ask questions and present evidence. In addition, the employee may provide information about any equality or diversity matters which may be relevant to their role. For example, any reasonable adjustments that may need to be considered to support with a disability.
50. Following the hearing, there will be an adjournment, while the Chair reviews the information provided in order to make a decision regarding next steps.
51. If the capability hearing is adjourned by the Chair (e.g., for the purpose of gathering further information) the employee will be informed of the adjournment period. If further information is gathered, the employee will be allowed a reasonable period of time, together with their companion, to consider the new information prior to the reconvening of the capability proceedings.
52. The Chair will decide on the outcome of the capability hearing seeking guidance, where appropriate, from the relevant HR representative.
53. After the hearing, the Chair will notify the employee of their decision in writing as soon as is reasonably possible, normally within 7 working days of the hearing.

If a capability sanction is to be applied the employee will be advised of the right to appeal.

Capability Sanctions

54. After the capability hearing the Chair will review all the evidence and decide what sanction, if any, is required. An employee will not normally be dismissed for performance-related reasons without two previous formal warnings. However, in exceptional circumstances, dismissal with only one or no previous warnings may be appropriate.
55. A **First Written Warning** will normally be issued where performance does not meet LSHTM standards or there is no improvement in performance about which the employee has previously been warned informally. Where it is found that such underperformance has occurred, a written warning will be issued to the employee and a copy placed on the employee's HR file.
56. The warning will:
- set out the improvement in performance required;
 - the period of time allowed to demonstrate improvement (review period);
 - where appropriate, the additional support to be offered to the employee to assist attainment of the required improvement;
 - inform the employee that further underperformance is liable to result in further action under this procedure;
 - specify the period for which the warning will remain "live", after such period the warning will usually lapse; and
 - state that the employee may appeal against the warning.
57. A written warning will lapse 6 months after issue, subject to satisfactory standards being maintained. In exceptional circumstances this timescale may be amended with agreement from the Director of HR or their nominated designate.
58. A **Final Written Warning** will normally be issued if:
- a first written warning has already been issued and performance has not improved sufficiently to reach required standards or
 - where the underperformance is of a more serious nature such that a first written warning is not appropriate.

59. Such a warning will:
- set out the improvement in performance required.
 - the period of time allowed to demonstrate improvement (review period);
 - where appropriate, the additional support to be offered to the employee to assist attainment of the required improvement;
 - inform the employee that further underperformance is likely to result in dismissal;
 - specify the period for which the warning will remain "live", after such period the warning will usually lapse; and
 - state that the employee may appeal against the warning.
60. Where it is found that such underperformance has occurred, a final written warning will be issued to the employee and a copy placed on the employee's personal record within HR. A final written warning will lapse 12 months after issue, subject to satisfactory standards being maintained. In exceptional circumstances this timescale may be amended with agreement from the Director of HR or their nominated designate.
61. **Dismissal** normally occurs if:
- there is insufficient improvement within the timescale prescribed by the Chair following the issuing of a final written warning.
62. The employee's salary will cease to be paid from the employment termination date and the employee will be advised of their right of appeal. In cases of summary dismissal, employees would be dismissed without notice or pay in lieu of notice.
63. If an appeal is successful, the individual will be reinstated on to the payroll and will be paid any back-payments of salary they may be due.

Review period

64. If a warning has been issued, the employee and their manager will meet at an early stage (normally within 5 working days of the warning being received) to put in place a detailed programme of action to support the delivery of the required improvement in performance within the review period. The review period will be specified in the outcome letter.
65. At the end of the review period, a meeting will be convened between the employee and their manager to review progress to date. If there has been no

improvement or insufficient improvement in the employee's performance during the review period, the employee will be invited to a further capability hearing.

66. Where the employee's performance meets the expected standards of sustained improvement, the capability proceedings will be concluded and this will be confirmed in writing to the employee by the manager, normally within 7 working days of the review meeting. Should the performance of the employee be considered unsatisfactory in the future, the procedure will start at the appropriate stage and due consideration will be given to the previous underperformance.

Appeal

67. An employee has a right of appeal against any formal capability sanction. Sanctions, including dismissal or warnings issued as a result of procedures, will remain in place pending the outcome of any appeal.
68. The employee must send their written notice of appeal to the Director of HR or their nominated designate, within 7 working days from the date of receipt of the capability outcome letter, clearly stating the grounds for the appeal which are limited to:
- i. New evidence which was not available at the first hearing. This requires an explanation as to why this evidence was not presented at the first hearing.
 - ii. The issues had been misunderstood resulting in a perverse outcome.
 - iii. The disproportionate nature of the capability sanction and reason why.
 - iv. Procedural failure or irregularities.
69. A decision to dismiss will be implemented immediately. In the event that the appeal is successful, the employee will be reinstated and given full continuous service.
70. Every effort will be made to hear the capability appeal as soon as reasonably possible. The employee will be given the right to be accompanied at the appeal hearing by a companion who is a trade union representative, an official employed by a trade union or a workplace colleague and an HR representative will be present.
71. For appeals against a sanction less than dismissal, the appeal will be heard by a Chair not involved in the original capability hearing assigned by the Director of HR

or designated HR representative. For appeals against dismissal, the hearing panel will consist of a Chair assigned by the Director of HR and an appropriate senior manager both of whom would not have been involved in the original capability hearing. An HR representative will be present at the hearing to advise on matters of policy and procedure. In both cases, the Chair of the Appeal Panel will be the ultimate decision maker.

72. The Appeal Chair will set the date for the appeal hearing and will expect the employee to make all reasonable efforts to attend at the date stipulated.
73. The appeal will ordinarily be conducted by way of a review of the decision to issue a sanction, as opposed to a rehearing. That is, the appeal will involve a determination as to whether the decision was one which a reasonable person could have made, on the basis of the evidence and arguments which were presented to that decision maker, considering the employee's reason for appeal (within the appeal criteria above).
74. In exceptional circumstances the Appeal Chair will determine that the appeal will be conducted as a rehearing. Such a decision will be entirely at the discretion of the Appeal Chair.
75. The Appeal Chair will make their decision as soon as reasonably practicable after the appeal hearing and will communicate that decision in writing to the employee, ideally within 10 working days. The Appeal Chair has the right to uphold or overturn the original sanction either in part or in full, and to apply lesser or greater sanctions if deemed appropriate. The written decision of the Appeal Chair will be final and will conclude this procedure.