

## Capability (Performance) Procedure

### Policy Statement

The purpose of this policy is to ensure staff at Halesowen College work to high and consistent standards in accordance with their job description, person specification, and the standards expected of all employees. If staff fail, they will be provided with the opportunity, support and encouragement to improve their performance.

The procedure aims to ensure that the reasons for any performance or capability issues are explored fully and plans are put in place to overcome issues. The intention of the process is to see an improvement in the individual's effectiveness by adopting a supportive approach.

### 1. Introduction

- 1.1 This procedure is designed to assist all employees to achieve and maintain expected standards of job performance. The aim is to ensure consistent and fair treatment for all in performing satisfactorily the duties required of the post to which s/he was appointed.
- 1.2 Throughout this procedure, the term 'line manager' is a generic term. This procedure applies to all employees other than probationers.
- 1.3 An employee has the right to be represented and accompanied by a representative of a trades' union or workplace colleague at any stage of the formal capability procedure.

### 2. Definition

- 2.1 A performance or capability issue is defined as any decline in normal levels of performance, or the inability to reach satisfactory levels of competence, which may be due to lack of knowledge, skill, ability or the use of inappropriate behaviours.  
This procedure should be used where there is an underlying lack of capability, rather than a deliberate failure on the part of the employee to perform to required standards, in which case the disciplinary procedure would be appropriate.

It is important that cultural, disability and other diversity related issues are taken into account when dealing with any performance issue.

### 3. Purpose

- 3.1 The Capability Procedure provides a 3-stage process for identifying, understanding managing and resolving shortfalls in an individual's performance where this falls below the standard normally expected. The overall aim of the procedure is to:
  - Ensure that any concerns about an employee's ability to achieve acceptable standards of work are addressed effectively through a clear and supportive procedure.

- Ensure that supervision, training, counselling and support measures are deployed appropriately to help employees to achieve acceptable standards of work.
- Provide a clear procedure for the termination of employment in cases where an employee does not reach a satisfactory and acceptable level of performance.
- Bring performance to a level at which an employee becomes effective.
- Acceptable levels of performance are normally identified through the expectations and objectives agreed for the role as part of the performance and or appraisal review discussions between the employee and line manager and as defined for the role within job description and person specification.

#### **4. Equality Considerations**

- 4.1 Line managers should take particular care to ensure employees with a disability are not subject to unfair discrimination. Required formats or reasonable adjustments will depend on an individual's needs, personal preferences and access to technology and may, for example, include large print, audio tape, email, memory stick or CD.
- 4.2 Any reasonable adjustments must be made available to a disabled employee to undertake the role and responsibilities of their post.

#### **5. Principles**

- 5.1 Line managers should ensure that any individual whose performance is unsatisfactory is clear about the:
- level of concern;
  - evidence used to reach this conclusion;
  - expected level of performance required;
  - type of support available;
  - consequences of failing to improve their performance.
- 5.2 Line managers contemplating using this procedure beyond the informal stage must seek advice from Human Resources.
- 5.3 Performance issues should not be viewed in isolation and should be considered in the overall context of performance management.
- 5.4 At each stage of the procedure, an employee will be informed about the shortfall in performance and will be given an opportunity to provide an explanation before any action is taken.
- 5.5 If the work colleague/representative is unable to attend a meeting on the date proposed, the meeting will be rearranged once, and an alternative date mutually agreed. The alternative date should normally be within five working days of the original date.
- 5.6 A shortened Capability (Performance) Procedure of up to four weeks would apply in particularly serious cases where the education, health or wellbeing of students (or nursery children) is in jeopardy. Examples of this might be where a teacher's classroom control is so poor that teaching and learning are seriously compromised, or where the majority of students under the lecturer's care fail to progress in that lecturer's lessons despite significant support already having been provided by the Teacher Development Manager and Line Manager. The procedure would move into Formal Stage 1.

5.7 Individuals who are being managed in accordance with this procedure in the Formal Stages 1 and 2, are unlikely to receive any pay progression.

## 6. Responsibilities

6.1 It is the line manager's responsibility to:

- monitor and address performance issues as early as possible;
- set objectives and expectations that are realistic, achievable and in accordance with the individual's job description and person specification;
- provide ongoing support and training;
- ensure that the employee is aware when the Capability Procedure has been instigated and provide them with a copy of the procedure;
- establish and agree performance improvement plans with the employee;
- conduct the informal and formal stages of this procedure.
- seek the advice and support of Human Resources.

6.2 It is an employee's responsibility to:

- participate in the objective setting process;
- achieve objectives and targets as required by the line manager;
- work towards supporting the 'College's Way' of working;
- perform to the best of their ability.

6.3 It is the responsibility of Human Resources to:

- provide advice and guidance to managers and employees to ensure that the capability procedure is followed correctly;
- support line managers, as necessary including at meetings in the formal Capability stages.

## 7. Procedure

The three stages of the procedure are:

- Performance Improvement Support (Informal Stage).
- Formal Capability (Stage 1).
- Formal Capability (Final) Hearing (Stage 2).

### 7.1 Performance Improvement Support (Informal Stage)

Where an employee displays an inability to perform their duties satisfactorily (eg poor classroom management; a continued profile of Grade 4 Lesson Observation that refers mainly to the performance of the lecturer; assessment of work; a trend of 'poor' and declining results as measured against national rates; where the majority of students under the lecturer's care fail to progress in that lecturer's lessons; poor customer care, continued mistakes and/or missing deadlines despite training and or significant support by the line manager), the line manager will attempt to resolve the matter informally in a meeting with the employee. Any shortfalls in performance require the line manager to inform the employee in a constructive and supportive way, the nature of the unsatisfactory performance and how such performance will need to improve. A copy of the Capability Procedure at that point should be made available to the employee.

The issues should be discussed promptly with the employee concerned and the causes of the shortfall identified. Examples of the shortfalls should be provided to the employee and consideration should be given as to whether the employee requires further training,

supervision, support or guidance. If appropriate, measures should be taken to provide additional support. A performance improvement plan will then be drawn up (see Appendix 2)

The aim of this stage is to support the employee at the earliest possible opportunity in order to improve their performance to the standard required. This may include:

- Regular supervision sessions
- Additional Training
- Feedback
- Support
- Guidance
- Work Shadowing
- Coaching
- Mentoring

For teaching staff, the advice and support of the Staff Development Manager should be sought.

It is recommended that the informal capability procedure is initially undertaken for a period of four weeks. Performance should be reviewed by the line manager and the employee on a weekly basis (or more frequently if necessary).

At the end of four weeks, a discussion will take place between the line manager and employee to review the progress being made and to specify any aspects of the performance plan that have not been achieved and remain outstanding. A further period of two weeks will be allowed to achieve these improvements.

At the end of the review period of four-six weeks, the informal stage can be extended further where there is evidence of significant improvement in performance and sustained progress in achieving the improvement plan. This can only be extended for a further period not exceeding four weeks (i.e. total review period 10 weeks maximum). After successful completion of this period an improvement notice will be given to the employee by the HR Director that will state the expectations set out in the performance improvement plan and discussions must be sustained for the next twelve months. Any lapses in those expectations then the formal Capability Stage 1 will be invoked.

In most situations however, a constructive discussion around shortfalls in an employee's performance with a focus on the standards required will bring about improvements in work performance. If, such improvements are not forthcoming within the above timescales, the individual will be informed that their performance will progress to and be managed in accordance with Stage 1 of the formal part of the procedure.

Throughout the process it is vital that all meetings are fully documented and that all parties receive a copy of the notes.

## 7.2 **Formal Capability (Stage 1)**

If, following conclusion of the informal stage, there has been no significant improvement then stage 1 of the formal procedure should commence. The informal stage could also include the significant support already having been provided by the Staff Development Manager/Professional Development Manager and/or Line Manager – see 5.6. The line manager must write to the employee informing them that a formal Stage 1 meeting will be held, giving at least 5 working days' notice and providing them with a further copy of the procedure.

Discussions at the meeting should focus on clarifying the performance shortfalls, understanding any underlying causes, reviewing and agreeing a clear performance improvement plan, with outcomes and time-scales.

At the meeting the manager will:

- Remind the employee that this is a formal stage in the College capability procedure and failure to make the required improvements may lead to dismissal.
- Explain how the expected performance standards are not being met and what the expected performance standard is.
- Seek to establish the causes for the continued unsatisfactory performance.
- Review the performance improvement plan drafted in the informal stage and amend as required.
- Following this formal review, if the required performance improvements have either not been met or not sustained the employee will be given a further opportunity of four weeks and in extenuating circumstances up to six weeks to make the required improvements. The employee will be advised that if the improvements are not forthcoming, there will be no alternative other than to proceed to the final stage (stage 2) and this may result in their dismissal.

At the end of the improvement period (four to six weeks) a discussion will take place between the manager and the employee. The employee will be informed that they have either achieved the improvement required or the matter will proceed to the final stage (Stage 2).

If the employee has achieved the targets agreed within their performance improvement plan and reached the standards required, this should be recorded and placed on the employee's personal file in Human Resources. If no further action is required, the record will remain 'live' for 12 months. If, however, during this 12-month period, there is a further lapse in performance this will be resumed at the stage in the procedure where it previously ceased. Depending upon the lapse in performance, it may be appropriate to move immediately to the Final Hearing Stage of the procedure.

### 7.3 **Formal Capability (Final) Hearing (Stage 2)**

At the conclusion of the four to six-week period of the performance improvement plan a second meeting should take place to review the progress made. The employee will be given written notification, at least five working days in advance, of the date, time and place of the Hearing which will be heard by a designated Senior Manager. This notification should outline the reasons for the hearing and include any relevant documents, e.g. copies of improvement plans.

The line manager should report on the outcomes of the targets and objectives set as detailed in 7.2 to the designated Senior Manager. The Senior Manager will:

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- take evidence from the line manager and the employee concerning the deficiencies in performance and the steps that have been taken to secure improvements.
- review the outcomes of any training that has been undertaken to secure an improvement in performance.
- review the support that has been in place.

- review the written documentation from monitoring meetings.
- call for any other evidence which they feel is necessary to establish whether the employee is failing to meet the reasonable expectations of performance for the post.
- if the failure to meet the expectations of the post may have been influenced by illness or disability the Senior Manager will consider whether all appropriate adjustments have been made.

The Senior Manager may take one of the following courses of action, according to the circumstances of the case:

- a. take no further formal action and issue a 12 month improvement notice under the direction of the HR Director.
- b. in consultation with the line manager set further performance targets appropriate to the post and to the deficiencies that have been identified, setting a time period in which the improvement in performance is required. This will normally be between four to six weeks. This will be given as a Final Written Warning under this procedure.
- c. recommends to the Principal dismissal in cases where the employee's performance is falling substantially below the standard required and he or she appears unable to improve to any significant degree, even when given clear targets and appropriate support and training, and redeployment is not a realistic option. The Senior Manager should ensure that in such cases the employee has been given the appropriate amount of support and time to reach the required standard.

The Senior manager may also:

- i. recommends to the HR Director changes to the working practices, working arrangements and patterns of work for either the individual employee, and/or the team in which he/she is employed. Detail support and training provisions that are available to the employee concerned.
- ii. recommend to the Principal consideration of the scope for redeployment to a post elsewhere in the College that would be appropriate to the skills and capabilities of the employee. [The post does not have to be on the same scale/salary. The offer should be made in writing, explaining why it is being made and the consequences of refusing it. The employee should be given time to consider the offer and be advised to discuss it with his/her representative.] See 9 below.

The Senior Manager will provide the outcome of the meeting in writing to the employee without unreasonable delay and in any case, communication will be provided within 5 working days.

## **8. Dismissal Interview**

- 8.1 If insufficient improvement in the employee's performance has been achieved after Stage 2 or an offer of voluntary redeployment is made and is not accepted, a final investigatory formal interview should be arranged with the employee and his/her representative.
- 8.2 Prior to the Dismissal Interview the Principal, or a Senior Post-holder to whom the power to dismiss has been delegated by the Principal, shall send to the employee at least five days before the Interview, a written statement setting out the circumstances which has led the employee being considered for dismissal and related documentation. The employee will be advised that they must be accompanied to the Hearing by a workplace colleague or Trades' Union representative, that they must provide any documents for the Interview, or names of witnesses at least three days prior to the interview. If the chosen representative of the employee is unavailable on the date of the initial dismissal Interview, the employee

may delay the date of that hearing once up to 5 days to enable the chosen representative to attend.

- 8.3 The Dismissal Interview should be conducted by the Principal or delegated Senior Post-holder. The Senior Manager should present the facts and the line manager should attend as a witness. On hearing the evidence and any explanations, a decision will be made whether to dismiss.
- 8.4 If Dismissal is the outcome, the employee should be dismissed in accordance with the Capability Procedure, with appropriate notice and communicated to the employee without unreasonable delay. The reasons for dismissal and the date on which the employment will terminate will be provided and they should be informed of their right to appeal in accordance with Appendix 1.

## **9. Alternative Work/Re-deployment**

The availability of alternative work must be considered wherever possible, before action is taken to dismiss an employee. There may be other suitable job vacancies for which the employee has the appropriate skills. Each case will need to be considered on its merits. Employees may be given access to this process prior to the final stage. If at the end of the period no suitable vacancies have arisen and there does not appear to be any real prospect of redeployment or an employee has unreasonably refused alternative employment, the employees contract will be terminated on the grounds of incapability.

Where a trial period has been agreed this will normally be for a period of four weeks and may be extended briefly through agreement between the manager and employee on the basis that further training may be necessary. The existence of long-term illness or disability, whilst not being material to the reason for invoking the Capability (Performance) Procedure, may need to be considered when identifying alternative employment. There is a requirement to consider reasonable adjustment to take account of the impairment but not any capability problem that is not related to the impairment.

## **10. Attendance at meetings**

- 10.1 Arrangements for meetings where possible will be at mutually convenient times. If a meeting has to be re-arranged due to an unexpected occurrence, then this will be as soon as possible and within the next 5 working days. If the employee is on sick leave, various options could be considered:
- 10.1.1 to hold the meeting with their trades' union representative in order to move the matter forward and for the manager to gain views.
  - 10.1.2 if the employee can attend the workplace for the purpose of the meeting, then this would be preferable in order to formally conclude the review.
  - 10.1.3 Where the employee is not able to come onto College Premises arrangements for a suitable venue will be made off site.
- 10.2 Formal hearings will be held by a senior manager who is there to ensure that the process is fair. Whenever possible this will be same senior manager for the first and second interviews. The line manager will normally present the facts, discuss progress and performance issues, to set targets and objectives and to identify support. The employee should be encouraged to actively take part in the process assisting with the identification of targets, objectives and support, including suggested staff development.

## 11. Sickness Absence

If long term absence (ie more than two weeks) may have been triggered by the commencement of capability procedures including the informal stage, the case should be referred immediately to occupational health to assess the employee's health and fitness for continued employment and their ability to attend relevant formal meetings. Consideration of termination of employment on health grounds under the Sickness Absence, Monitoring and Control Procedure paragraph 5, should be subject to relevant medical advice and reports.

Reviewed / Approved	By	Date
Reviewed	Rachael Charles	September 2017 May 2018 September 2019 March 2021 August 2022
CE		16 September 2015
Staff Council		11 June 2013
Corporation		
Website	Yes / No	No
Next Review Date		September 2024



### Appeals Procedure against Notice of Dismissal

- 1 An employee who wishes to appeal against notice of dismissal should inform the HR Director in writing within ten days of the date of the decision which forms the subject of the appeal.
- 2 The appeal will be heard by the Principal if the dismissal was determined by a senior post-holder. If the Principal dismissed the employee, the appeal must be heard by a committee established by the Corporation.
- 3 The appeal hearing will take place as soon as reasonably practicable after the notice to appeal has been received by the HR Director.
- 4 The employee will be given at least five working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed).
- 5 At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague of his or her choice.
- 6 The Principal, or Corporation's committee appointed to hear the appeal, shall take into account any representations of the employee and the Principal's decision (or, where applicable, the decision of another senior post-holder) to dismiss, and take such action as it considers appropriate.
- 7 The decision will be notified to the employee within five working days (and, as appropriate to the Principal or other senior post-holder who took the decision to dismiss). The decision will be final and binding.
- 8 In cases of an appeal against a notice of dismissal, the dismissal will not be confirmed until the appeal has been determined.

## Performance Improvement Action Plan

Name \_\_\_\_\_

Date \_\_\_\_\_

Issue / Objective	Action required	Intended outcome	Completion Date	Review / progress
1.				
2.				
3.				
4.				
5.				

Signed \_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_