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Status:	Current policy

Version history	
V1	Previous policy to 2009
V2	New policy September 2011
V2.1	internal review: no action needed 2012
V2.2	Exclude references to attendance. Reviewed 2021 minor nomenclature changes.
Next update due	2024 3 years unless legislative update needed

V2.2 AL0321
CAPABILITY Policy v 2.2 AL0321



CAPABILITY POLICY

1. INTRODUCTION

Liverpool Hope recognises that staff are the University's most important asset. This policy provides a framework of support and consistency to the management of all issues of competence and capability. Capability is defined in the Employment Rights Act 1996 as

'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'

The policy covers capability to perform duties of the post where issues of competence are concerned. This may include:

- Adequacy of skills
- Inability to cope with reasonable workload
- Inability to work to identified standards
- Lack of ability to distinguish appropriate work priorities.

This Policy should not be used for managing cases of sickness absence or misconduct. Capability to perform duties as a result of sickness is dealt with under the Sickness Absence and Monitoring Policy. The purpose of the Capability Policy is to manage cases of underperformance, including those cases where ill health may be a contributing factor. Particular care should be taken when health issues are involved and advice sought from Personnel

In implementing this Policy and the associated guidance, due regard will be given to relevant legislation and the ACAS Code of Practice. It does not confer contractual rights or form part of any contract of employment and may be amended by the University or replaced at any time in consultation with the University's recognised trade unions

2. SCOPE

Other than staff on probation, these procedures apply to all employees.

3. RESPONSIBILITIES UNDER THIS POLICY

Employee Responsibilities

All employees have a contractual responsibility to perform their duties to an acceptable standard and to continue their development in post to meet new challenges in work commensurate with their responsibilities. They will be given reasonable support and encouragement to do so.

All employees are also responsible for bringing to the attention of their line managers, as soon as possible, any work related problems, health or personal circumstances that may affect their performance.

Management Responsibilities

All University managers are responsible for addressing capability issues (relating to competence) without delay and for taking appropriate action in their areas, in line with policy.

Personnel

The Personnel department is responsible for providing advice and guidance to managers and employees on the application of this policy and procedure and has a specific role to fulfil during the formal stages of the capability procedure.

The Department is also responsible for monitoring and reviewing the effectiveness of this policy and procedure, and will provide training in the management responsibilities established under this policy.

4. CAPABILITY WHERE ISSUES OF COMPETENCE ARE CONCERNED

Whilst the University seeks to support staff in maintaining competence, the capability procedure **may be implemented at any stage** if the employee's alleged underperformance/incompetence warrants such action.

The disciplinary policy could also be used in this instance where the act is deliberate or due to neglect. In these circumstances Personnel should be contacted for further advice.

Informal Process

If a line manager has concerns regarding an employee's performance or conduct, an informal meeting should be held between the employee and their line manager to discuss concerns, obtain the employee's viewpoint, clarify standards/objectives and offer support and training if required. A note of the meeting should be recorded and an action plan developed on how and when improvements in performance are to be achieved. Although this is an informal procedure a written record of such discussions and any agreement will be retained by both parties. The employee should be informed of the consequences of not improving performance to an acceptable level.

The manager will regularly review progress throughout the review period and conduct a review meeting with the employee at the end of the review period.

If it is evident that there has been acceptable improvement in performance then this will be clearly acknowledged and the employee will be advised that no further action will be taken under this policy on this occasion.

If significant improvement has been made but the required standard has not yet been achieved, or mitigating circumstances are identified, the review period may be extended by the manager.

If, after a reasonable period, there is limited or no progress, the manager may consider progressing to the formal procedure described below.

Care should be taken to ensure that any informal action does not turn into formal action. If during a discussion it becomes obvious that the matter may be more serious, the meeting should be adjourned. The employee should be informed that the matter will be continued under the formal capability procedure.

Electronic recordings of informal or formal meetings under the Capability procedure are not permitted

5. FORMAL CAPABILITY PROCESSES

Prior to embarking on formal procedures, managers should notify Personnel so that appropriate support and guidance can be given. A Personnel Manager will usually be assigned to assist the manager through the process. If, at any time, evidence arises which needs further investigation (during any of the formal review meetings), the meeting will be adjourned to a later date.

The Chair has the right to question any relevant witnesses he/she may deem appropriate in helping to reach a decision.

Arranging the Capability Review Meeting

A stage 1 and stage 2 formal review meeting will normally be conducted by an appropriate relevant manager assisted by a member of Personnel. A stage 3 formal review will normally be chaired by a member of USET. For any stage of the formal reprocess, the manager will write to the employee a minimum of 7 working days' notice prior to the meeting. The written notification will include:

- The believed shortfall in performance
- The date, time and location of the meeting
- Supporting documentation to be referred to
- Details of action previously taken
- Right to representation
- Outline of the potential sanction including dismissal, if a final review meeting

The employee needs to give at least 5 days' advance notification of any relevant witnesses they intend to call.

If the employee wishes to submit any documents in advance of the meeting then these should be made available to the person holding the meeting at least 5 working days in advance of the hearing.

The manager responsible for holding the meeting will make arrangements for copies of all documentation to be made available to the parties at least 3 working days in advance of the meeting

Stage 1 – First Stage Formal Capability Review Meeting

A first stage meeting may take place where:

- an employee is failing to perform to an acceptable standard despite having been given guidance and assistance or if the standard of unsatisfactory performance is deemed to be sufficiently serious to potentially warrant a written warning.

If, on conclusion of the review, the manager remains dissatisfied with the performance of the employee, the following actions shall be specified in writing (improvement note) normally within 7 working days:

- Confirmation of the performance problem
- The improvement required with detailed timescales including review date
- Any support or assistance to be provided
- A written warning if deemed appropriate
- The potential consequences of failing to attain the performance
- The right to appeal against any warning

Stage 2 – Second Stage Formal Capability Review

Meeting A second stage meeting may take place where:

- The improvement in performance specified at the First Stage is not achieved within the timescales or the standard of unsatisfactory performance is deemed to be sufficiently serious to potentially warrant a final written warning.

If, on conclusion of the review, the manager remains dissatisfied with the performance of the employee, the following actions shall be specified in writing (improvement note) normally within 7 working days:

- Confirmation of the performance problem
- The improvement required with detailed timescales including a review date/s
- Any support or assistance to be provided
- A final written warning if deemed appropriate
- The potential consequences of failing to attain the performance required
- The right to appeal against any warning

Stage 3 – Third Stage Formal Capability Review Meeting

A third stage Capability review meeting may take place where:

- The improvement in performance specified at the First and/or Second stage is not achieved within the timescales or standard of unsatisfactory performance is deemed to be sufficiently serious to be potentially gross incompetence

The employee will be invited to a Third stage capability review meeting chaired by a member of USET Team.

If, on conclusion of the review, the member of USET Team remains dissatisfied with the performance of the employee, the following actions shall be specified in writing:

- Confirmation of the performance problem
- The improvement required with detailed timescales
- Any support or assistance to be provided
- Written warning, final written warning or dismissal if deemed appropriate
- The potential consequences of failing to attain the performance required
- The right to appeal against any warning/dismissal

6. LEVELS OF ACTION

A written warning will be effective for a period of 9 months from the date of the letter following the capability meeting. After that time it will be disregarded subject to satisfactory performance. If during the 9 months matters deteriorate further then action at the next level will be considered immediately.

A final written warning will be effective for 12 months from the date of the letter following the capability meeting. After that time it will be disregarded subject to satisfactory performance. If during the 12 months matters deteriorate further then the potential for dismissal will be considered.

A decision to dismiss can only be taken by a member of USET. The employee will be provided with a written reason/s for dismissal, the date on which employment will be terminated and the right of appeal. If the dismissal is with notice, the notice period will be as stated in the employee's contract of employment, but the University may make a payment in lieu of notice.

7. NO FURTHER ACTION

During the informal process or the formal process if the improvement in performance meets the required standard the manager will notify the employee. The employee will be expected to maintain the required standards that they have achieved.

8. APPEALS

Informal There is no right of Appeal against the informal stage of the process.

An employee has the right to appeal against the decision of any formal sanction

including dismissal.

He/She should submit in writing to the Director of Personnel (or his/her nominee), notice of his/her intention to appeal within 7 working days of receiving the letter confirming the disciplinary action.

This letter must be accompanied by a clear statement specifying the basis upon which an appeal is sought.

An appeal may be made on the basis of any one of the following

- circumstances:
- the procedure was not used correctly
 - new evidence can reasonably be brought forward
 - the disciplinary action was unreasonable
 - the penalty imposed was disproportionate to the offence

Normally appeals will be conducted by an appropriate manager more senior than the manager who made the decision and not previously involved in the matter and a Personnel Manager not previously involved with the case to advise. If the appeal was from a senior manager and the Vice Chancellor has heard the original capability review, then the Chair of Staffing Committee or his/her nominee would hear any appeal.

Where the appeal is against dismissal and appeals panel will be convened comprising of a minimum of 1 member of University Council.

The role of the Appeals hearing is to review the process that led up to the management decision, ensuring that the procedure was used correctly, the action taken reasonable and to consider any new evidence brought forward.

As soon as reasonably practicable and not normally less than 7 working days before the hearing the parties will be notified of the time and date of the appeal hearing.

At least 5 working days before the hearing, the parties will provide Personnel with their written submissions. The employee should also notify Personnel of any relevant witnesses they intend to call. Personnel will forward all of the above submitted information as soon as reasonably practicable and not less than 3 working days before the date of the hearing.

At the Appeal hearing the employee will have the right to be accompanied by a companion. The employee and/or his/her companion will present his/her case to the panel.

The Appeal hearing will consider its decision in private.

If at any time, evidence arises which needs further investigation, the Appeal hearing will be adjourned to a later date.

The Chair has the right to question any relevant witnesses he/she may deem appropriate in helping to reach a decision.

The Chair of the Appeal Hearing will write to the employee informing him/her of the outcome as soon as possible normally within 7 working days.

The appeal procedure will be carried out as soon as practicable.

The Manager hearing the Appeal will write to the employee informing him/her of the outcome normally within 7 working days.

9. RIGHT TO BE ACCOMPANIED

During any formal review meeting and appeal hearing the employee has the right to accompanied by a companion see Appendix 1.

10. INABILITY TO ATTEND THE FORMAL REVIEW MEETING OR APPEAL HEARING

If the chosen colleague or trade union representative is unable to attend a scheduled formal review or appeal hearing the member of staff has the right to request a reasonable postponement of the hearing for up to 5 working days.

Where an employee is persistently unable or unwilling to attend a capability meeting without good cause the employer should make the decision on the evidence available

11. EQUAL OPPORTUNITIES

Liverpool Hope University is committed to the principles of equality and diversity as well as the elimination of discriminatory practices. These principles apply to the treatment of all staff.

This policy together with any supporting procedures will be implemented in a non discriminatory manner. Members of the University administering the policy are responsible for ensuring that in its application, those to whom the policy applies, shall not receive less favourable treatment on grounds of sex, marital status, gender reassignment, racial group, disability, sexual orientation, religion or belief, age, socio-economic background, trade union membership, family circumstances, or any other irrelevant distinction.

If the member of staff has a disability, it may be appropriate to allow him/her to be accompanied by a suitable person because of his/her disability, in addition to a work colleague or trade union representative.

If the member of staff's first language is not English, it may be appropriate to allow him/her to be accompanied by someone who can provide support with communication in English, in addition to a work colleague or trade union representative.

APPENDIX 1

The role of the companion under this policy

The companion may be a trade union representative or work colleague, or an official employed by a trade union.

To exercise the right to be accompanied the employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However it would not normally be reasonable for the employee to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.

The role of the companion is to assist and support the employee by acting as a friend and advisor. The companion is allowed to address the hearing to put and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting and confer with the employee during the hearing. The companion does not have however have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case..

Colleagues who do not wish to accept an invitation to act as a companion are not obliged to do so.

Companions may attend meetings during working hours without loss of pay.

The companion may assist in the preparation and presentation of the employee's case.

Employees are responsible for ensuring their companions are willing to support them and attend meetings/hearings.

Employees may not appoint a legal representative to act as a companion.

Where a companion is a witness (or is otherwise involved, or is potentially involved) in the investigation of a capability matter, the employee should be advised to select a different companion on the grounds that the presence of that individual may prejudice the hearing.

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