Newcastle University Capability Procedure

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A Manager’s Code of Practice is available and should be read in conjunction with this procedure before commencing any informal or formal action.

1. INTRODUCTION

1.1 Preamble
The University recognises that its employees are its most important asset and that as an organisation it is only as good as the people it employs. The University believes that it has a highly skilled, professional and competent work force and that the majority of its employees work to the highest standards. It also recognises that there may be occasions when employees do not always meet the standards of performance required. This procedure has been drawn up to deal with the minority of cases where performance does not meet
acceptable standards and should be used to encourage and assist employees to meet the standards of performance of the job for which they are employed, once they have satisfactorily completed probation. All staff will be treated consistently and fairly and this procedure is designed with the primary objective of improving an individual’s performance to the required level wherever reasonably practicable / possible.

All employees are expected to perform their duties to an acceptable standard consistent with reasonable expectations of the time required to perform particular duties and the hours the employee is expected to work. Expected standards must take account of the variability of duties, the availability of external funding, and both the long-term and short-term aims for the post concerned, as appropriate. The University has a responsibility for setting realistic and measurable standards of performance and to provide reasonable support, adequate supervision and encouragement to do so. The University operates a Performance and Development Review (PDR) process for all employees that is designed to allow structured discussions about performance and development and to agree future objectives. The University has a responsibility to ensure that all employees experiencing performance difficulties are managed appropriately. In the case of poor performance due to misconduct the Disciplinary Procedure will apply. In the case of ill-health and absence the Sickness Absence Policy will apply. In the case of poor performance experienced by an employee with a disability, appropriate steps will be taken to explore whether the issue of performance could be resolved through a reasonable adjustment to their work or work environment. If relevant reasonable adjustments have been put into place, and there is still poor performance, then the Capability Procedure should be used.

This procedure applies to all employees. With regard to academic staff, as defined in the University Statutes, due regard will be given to academic freedom as specified in the University Statutes.

Where, in any matter raised under this procedure, a member of academic staff claims a defence on the grounds of academic freedom (as defined in the University Statutes), the matter should be referred to the Executive Director of Human Resources (HR). The Executive Director of HR (or nominee) will suspend any proceedings and instigate an investigation of the claim. The investigation will be carried out by a panel comprising a senior member of academic staff nominated by senate and a lay member of council, neither of whom will have any connection with the employee concerned.

The panel considering the complaint relating to academic freedom shall take evidence from the parties and from any other sources that it believes necessary and appropriate. The complainant shall be entitled to provide oral and/or written evidence in relation to his/her complaint to the panel, and to call such witnesses as s/he thinks appropriate. The complainant shall also be entitled to be represented by a trade union representative or work colleague who will be allowed to address the panel as set out under Right of Representation in the General Principles section below. The decision of the panel shall be confirmed in writing giving reasons for reaching the decision. In the event that the complaint is upheld all actions against the complainant shall be withdrawn and the existence of the complaint and any details relating to it or any investigation thereof expunged from HR records. Should the complaint be held to be unfounded then the original capability process should resume.
1.2 General Principles
The majority of employees have acceptable standards of performance. Poor performance is not acceptable to the University and will be addressed in a reasonable, timely and constructive manner.

Performance problems are more effectively dealt with as early as possible and as close to the source of the problem as possible.

At all stages of this procedure due regard will be given to respect the employee’s right to confidentiality and this extends to consideration of the appropriate use of different forms of communication, including e-mail.

If the perceived incapability is considered serious enough (eg where it could endanger the health and safety of others) or if it means the employee cannot perform his or her own job and there is no suitable alternative available, the University reserves the right to suspend an employee on full pay whilst an investigation takes place. Suspension will be for no longer than is necessary and should not exceed 15 working days to allow an investigation to take place. Any suspension would be a precautionary act and does not in itself constitute formal action.

If a capability problem or a problem relating to an employee’s qualification (eg the loss of a driving license or certificate to practice) makes it impossible to carry out his/her job, the matter will be referred to HR who will arrange meetings with the employee with a view to finding a mutually acceptable redeployment opportunity. Where no such opportunity can be identified within 10 working days, the employee may be advised that they are dismissed on the grounds of capability in accordance with the notice provisions in their contract of employment. They must be advised in writing of their right of appeal.

Performance issues should be addressed as they arise and should not be stored up for the annual PDR meeting. PDR meetings should continue as normal once performance issues have been raised under this procedure.

1.3 Right of Representation
Employees are entitled to be accompanied by their trade union representative or a work colleague during any hearings, formal meetings, or appeals relating to this procedure. The trade union representative or work colleague will be allowed to put the employee’s case, sum up the employee’s case, respond on the employee’s behalf to any view expressed at the meeting or appeal hearing, and ask questions on the employee’s behalf. However, they will not be allowed to answer questions on behalf of the employee. He/she and the employee will have the right to request reasonable adjournments during any formal meeting to have discussion amongst themselves. No other form of representation is permitted for either party. The employee shall be entitled to provide oral and/or written evidence, and to call such witnesses as s/he thinks appropriate. The trade union representative or work colleague and any witnesses called will be provided with reasonable time off from their normal duties with no loss of pay in order to prepare for and attend the meeting or appeal.

1.4 Trade union representatives
No formal action under this procedure will be taken against an employee who is a recognised trade union representative until the circumstances of the case have been discussed with a full-time trade union officer or their nominee of the trade union concerned.
1.5 Scheduling of formal meetings & appeals
Managers will make every effort to provide as much notice as possible to allow an employee and where appropriate their representative sufficient time to prepare for the meeting, which should be arranged at a mutually convenient time for all parties with a minimum period of notification of 5 working days. Notification of meetings must be provided in writing, at which time the employee will be given a copy of the relevant procedure, written details of the matter to be considered at the meeting, any supporting documentation that will be relied upon by the employer’s side during the meeting/appeal, and the names of any witnesses that the employer’s side may call. In the event that one of the parties is unexpectedly unable to attend the meeting at the notified time, the meeting will be postponed and rescheduled to an alternative time within 5 working days after the date initially proposed. The employee in turn must submit any documentation they wish to be considered at the meeting, and the names of any witnesses they wish to call, at least 3 working days before the meeting. Written notes of meetings will be taken by a non-participating individual and agreed with the employee wherever possible. They will be made available to the employee and where the employee was accompanied during the hearing by a trade union representative also made available to that representative, but otherwise treated as confidential. If an employee disagrees with the notes then s/he shall set out their disagreement to the relevant HR representative and the manager or panel as appropriate.

Where specific timetables are given in this procedure, they must be subject to reasonable arrangements.

A representative from HR will be present at the Final Review meeting.

1.6 Right of Appeal
All employees have the right of appeal at any formal stage in the process. Further details on the appeal process are set out in section 3.

1.7 Progression through the stages
In most cases an employee should not be dismissed because of a failure to perform to the required standard unless warnings and an opportunity to improve have been given. Normally, the procedure will commence with the informal stage and progress through each stage. However, where the circumstances are appropriate (e.g. a serious breach of safety rules endangering the health and safety of others) some or all of the earlier stages may be omitted, and the procedure commenced at stage 3 – (consideration of dismissal, following a full investigation of the circumstances).

1.8 Levels of Authority
The formal stages of the procedure should normally be dealt with by the line manager. The Stage 3 meeting should normally be conducted by a more senior manager than the one who has handled the case up to that stage; however, if that is not possible, an appropriate manager at the same level as the more senior manager who has not been involved in the previous stages may conduct the meeting. At stage 3 the manager must be one who has the authority to dismiss the employee.
Stage 3 meetings for employees on grades A to F should be conducted by managers on grade H and above who will have authority to take action up to and including dismissal.

Stage 3 meetings for employees on grades G and H should be conducted by Heads of Service/Academic Unit who will have authority to take action up to and including dismissal.

For Heads of Service and other senior employees on grade I, a member of the University Executive Board will conduct the stage 3 meeting and will have authority to take action up to and including dismissal.

**Academic staff (as defined in the University Statutes)**

In this context ‘academic staff’ is normally regarded as including research staff, who are also covered by the University Statutes. Where separate arrangements apply to research staff, they are defined as those members of academic staff who are in employee sub-group ‘Research’ or ‘Clinical Research’ and who are returned to HESA with Academic Employment Function ‘Research only’.

Heads of academic unit will conduct stage 3 meetings for research staff on grades F and G and will have authority to take action up to and including dismissal.

For academic staff up to and including grade I, the Faculty Pro-Vice-Chancellor will conduct the stage 3 meeting and will have authority to take action up to and including dismissal.

For Heads of Academic Unit and Deans, the stage 3 meeting will be conducted by a member of the University Executive Board who will have authority to take action up to and including dismissal.

The Vice-Chancellor will have the authority to take action up to and including dismissal for members of the University Executive Board.

In all cases the manager taking the decision as set out above will chair the stage 3 meeting.

**1.9 What procedure to follow?**

This procedure must be used where work performance does not meet acceptable standards. Where the manager feels that the substandard performance is due to an employee’s negligence or lack of application, then normally the matter would be dealt with under the disciplinary procedure. The manager may decide on the appropriate procedure after an investigation. In cases where the problem appears to be related to ill health, long term or short term/frequent absences, the manager in conjunction with a member of the HR section, will take action under the University’s Sickness Absence Policy. Where an employee has a disability, appropriate steps shall be taken to explore whether the performance could be resolved through reasonable adjustment to their work or work environment. If there is still poor performance, then the Capability Procedure shall be used.

The procedure shall be compliant with ACAS guidance and employment legislation.
2. PROCEDURE

2.1 Informal Stage
Where work performance does not meet acceptable standards, the line manager shall meet with the employee on an informal basis to outline the areas where performance is below acceptable standards, (with supporting evidence) and to jointly find a solution to the problem, before entering the formal stages. The informal stage provides an opportunity to rectify situations before it is necessary to enter into the formal procedure. The purpose of this stage is to improve performance. The Manager must ensure that the member of staff fully understands the process. Expectations need to be clear at all times and confirmed in writing.

If matters cannot be resolved informally and acceptable performance achieved, then the formal procedure shall commence. Advice should be sought from HR before commencing the formal process.

2.2 Stage 1 – Formal Interview
Following the informal stage and where no or insufficient improvement has resulted, the manager will initiate the formal process. The manager will arrange a meeting with the employee taking account of the requirements set out on scheduling of meetings and the rights of representation, as contained in the General Principles section above.

At the meeting the manager will:

- Make clear the areas in which the individual’s performance is below expectation (explaining the grounds/evidence for this view).
- Try and identify any problems or reasons for the underperformance, in particular whether there are any personal or health issues.
- Seek the employee’s commitment to reaching the required standards.
- Set an improvement plan, incorporating targets, standards, deadlines and further support.
- Set a reasonable time frame within which improvement is expected. (When establishing timescales, it is important to consider the complexity of the tasks involved).
- Set up a regular progress review meeting during the review period.
- Advise the employee of his/her right of appeal.

If having heard the explanation offered by the employee the manager remains concerned, a Formal caution will be given for unsatisfactory performance. This will be confirmed in writing no longer than 2 working days from the date of the meeting. The caution will be placed on the employee’s HR file and will be disregarded after a period of 12 months.

It is important that notes are kept of all meetings, both informal and formal meetings and they will be made available to the employee and where appropriate the accompanying trade union representative (see scheduling of meetings in the section on General Principles above). A copy of the improvement plan will be sent to the employee. The manager shall send a copy of the notes and improvement plan to the relevant HR representative for information.
2.3 Stage 2 – Formal Review
At the end of the review period a formal review meeting shall take place. The manager will arrange a meeting with the employee taking account of the requirements set out on scheduling of meetings and the rights of representation, as contained in the General Principles section above.

- If the required standards of performance have been achieved, the employee will be advised of this and encouraged to sustain the improvement.
- If some reasonable improvement has been made but not to the standard required, then the review period should be extended by a reasonable period of time. The improvement plan should be revised as necessary.
- If there has been little or no improvement the employee should be advised that he/she has failed to improve, giving examples to support this. A further review date will be agreed. Alternative options should be discussed with the member of staff, such as transfer to suitable alternative employment; or where appropriate, consideration should be given to revising the current job description and grade to reflect more accurately the role performed, or withholding an increment or progression (e.g. Lecturer level F to G, and Research Assistant to Research Associate, level F). The employee should also be reminded that, in the absence of other suitable options, dismissal may result.
- The employee must be advised of his/her right of appeal.

If having heard the explanation offered by the employee the manager remains concerned, a Final caution will be given for unsatisfactory performance. This will be confirmed in writing no longer than 2 working days from the date of the meeting, and reference should be made in the letter that failure to achieve a satisfactory level of improvement in performance or to maintain a satisfactory level of performance may result in dismissal. The caution will be placed on the employee’s HR file and will be disregarded after a period of 12 months.

A copy of the improvement plan will be sent to the employee. The manager shall send a copy of the notes and improvement plan to the relevant HR representative for information.

2.4 Stage 3 – Final Review
At the end of the review period a formal meeting will be arranged with a manager more senior than the one who has dealt with the earlier stages and a HR representative will be present at the meeting. The meeting will be arranged taking account of the requirements set out on scheduling of meetings and the rights of representation, as contained in the General Principles section above. Because a possible outcome of the final review is dismissal, the manager chairing the final review (the manager) must be one who has the authority (as defined in the section on general principles) to dismiss the employee. The employee will be reminded that a possible outcome of the meeting is redeployment or dismissal.

- If the required standards of performance have been achieved, the employee will be advised of this and encouraged to sustain the improvement.
- If significant progress has been made but further limited support is necessary to ensure a permanent satisfactory improvement, then the employee is to be informed of this and given examples and a further review date shall be agreed.
- If there has been insufficient improvement or an un- sustained level of improvement in performance within the timescales agreed, the employee shall be advised that he/she has failed to improve, giving examples to illustrate the points raised. The employee must be advised that dismissal is an option for the University.
The Manager should be satisfied that: reasonable practicable assistance has been/is being given to the employee to help them achieve the required standard; the line manager has acted fairly and consistently (taking account of the employee’s length of service, previous performance and the extent of non-performance); reasonable effort has been put into identifying suitable alternative employment where this is appropriate.

Once satisfied of the above, the manager will:

Confirm to the employee the action taken to date and seek their input and agreement/recognition of what has happened.

Advise the employee of the options currently under consideration following the earlier review meetings, e.g. withholding an increment or progression (e.g. Lecturer level F to G, and Research Assistant to Research Associate, level F\(^1\)), extension to review period, or transfer to suitable alternative employment; or where appropriate, consideration should be given to revising the current job description and grade to reflect more accurately the role performed; or if no other options are available, dismissal. Where appropriate, advise the employee of any suitable available vacancies.

The meeting should be adjourned to consider all the facts before the manager reaches a final decision. The manager will inform the employee of his/her decision and will confirm this decision in writing to all present, including the reasons for reaching the decision, no longer than 2 working days from the date of the meeting. Where the decision is that the employee is incapable of meeting reasonable performance expectations of their present position, but could meet the performance expectations of another position, a further meeting will take place within 10 working days between the employee, the Head of Unit, and an HR representative with a view to finalising and agreeing a revised job description and grading or confirming a mutually acceptable opportunity for transfer to a lower graded job to which the employee will be transferred at the associated salary (note: it is important that all other alternatives have been fully explored before the final review). Where no such opportunity can been identified the employee may be notified by the manager chairing the review that he/she is dismissed on the grounds of capability in accordance with the notice provisions in their contract of employment. They must be advised in writing of their right of appeal. Redeployment opportunities should continue to be sought during the employees notice period.

Where there is the possibility of redeployment to a more suitable position, or where the employee is to be transferred to a lower grade job, s/he will be transferred to that grade with the associated salary. The employee shall be allowed sufficient time, normally 10 working days, to consider the offer, and shall be informed that a consequence of refusal will normally be dismissal. The employee shall be asked to confirm their decision in writing to the manager within the specified period. Where there are no suitable redeployment opportunities acceptable to either the University or the employee, the employee will be advised that they are dismissed on the grounds of capability in accordance with the notice provisions in their contract of employment. They must be advised at the meeting and in writing of their right of appeal. The outcome of the meeting shall be confirmed in writing with copies to all present no longer than 2 working days from the date of the meeting.

\(^1\) Withholding pay or incremental progression should be in line with the Pay Review Policy.
3. APPEALS

An employee who wishes to appeal against any formal caution or action (including dismissal) under this procedure shall submit notice of appeal in writing to the Executive Director of Human Resources within 10 working days of a formal meeting or hearing, setting out the particular grounds for the appeal.

An appeal hearing will be held within 15 working days of the appeal being requested. The meeting will be arranged taking account of the requirements set out on scheduling of meetings and the rights of representation, as contained in the General Principles section above.

The appeal will be heard by a single person (adjudicator) nominated by the Executive Director of Human Resources (or an Assistant Director of Human Resources) who will be a manager senior in authority to, or at the same level as, the manager who applied the sanction and will not have been previously involved in the case.

In the case of academic staff, as defined in the University Statutes, any appeal against dismissal will be heard by a panel comprising a lay member of council and a senior academic nominated by senate, neither of whom will have any connection with the employee concerned.

A member of the Human Resources Section shall attend the appeal hearing in an advisory and secretarial capacity.

The adjudicator/panel shall determine the conduct of the hearing and shall ensure that both sides of the case are fully considered, and that the employee and/or representative and the manager are given full opportunity to put their case and to put questions to any witnesses.

The following procedural guidelines shall apply during the hearing, which may be adjourned at any time at the discretion of the adjudicator/panel:

- There will be no legal representation at an appeal hearing.
- The adjudicator/panel shall review both the proceedings to date and the evidence relied upon together with any further evidence submitted and may put questions to the employee and any representative and/or call witnesses, and shall allow the employee and any representative to put questions to witnesses.
- Normally, the employee will open the appeal hearing by way of representations in support of his or her appeal, and shall be entitled to provide written and oral evidence in relation to his/her appeal and to call such witnesses as s/he thinks appropriate.
- The manager who took the formal decision will, if requested by the adjudicator/panel, be available to attend the appeal hearing and will outline at the hearing, in the presence of the employee and his or her representative, the reasoning behind his or her original decision.
- Where an investigation was carried out, the person who carried out the investigation which led to the formal decision may also be required to attend the appeal hearing and will make representations, in the presence of the employee and his or her representative, in relation to the investigation undertaken.
- The manager and the person who carried out the investigation will have the opportunity to put questions to the employee (or his/her representative) and his/her witnesses.
- The employee (or his/her representative) will have the opportunity to put questions to the manager and the person who carried out the investigation and any of their witnesses.
• The adjudicator/panel will have the opportunity to put questions to all those present at the hearing as appropriate.
• The employee (or his/her representative) and the Manager will have the opportunity to sum up their case.
• All of the parties will withdraw, with the exception of the HR representative. The adjudicator/panel will deliberate in private, accompanied by the HR representative but may recall any of the parties to clarify points of uncertainty. If recall is necessary, both parties are to return.
• The decision of the adjudicator/panel shall be confirmed in writing within 2 working days giving the reasons for reaching the decision. In the event that the appeal is upheld all actions against the appellant shall be withdrawn and the existence of the action taken and any details relating to it or any investigation thereof expunged from HR records. If pay has been withheld this should be made up to the member of staff at the earliest opportunity.
• Where the adjudicator/panel is satisfied that any action or formal warning imposed by the manager was within the band of reasonable responses which the manager could have selected, the original decision will be upheld. In other cases, the adjudicator/panel may substitute a different decision which may include the imposition of some other lesser penalty.
• Actions put in place before submission of an appeal, including notice of dismissal, remain in effect pending the outcome of the appeal.
• The appeal decision will be final.
• The employee will be entitled to receive written notes of the appeal proceedings and of the reasons for the decision of the person/panel hearing the appeal. Where the employee was accompanied during the hearing by a trade union representative, this document will also be provided, on a confidential basis, to that representative.

Where the employee (and/or his/her representative) fails to attend the appeal hearing without good reason which has been notified to the Human Resources representative by the start of the hearing, the hearing will proceed in his/her absence.

4. STATUS OF THE PROCEDURE

The employment relationship between the University and each of its employees is set out in the contract of employment. This procedure does not form part of the contract of employment but it shall apply both to the University and to all of its employees.

5. ILL HEALTH AND POOR ATTENDANCE

An individual’s capability to carry out their role to the required standard may be affected by their health and their attendance record. Managers must bear in mind the provision of the Equality Act, in particular the obligation to make reasonable adjustments when dealing with employees with a disability. The procedure for managing long term periods of sickness absence is set out in the Sickness Absence Policy. Managing repeated short term absence is also covered in the Sickness Absence Policy.

6. RELATED DOCUMENTS
Capability Procedure – Manager’s code of practice
Sickness Absence Policy & Procedure
Disciplinary Procedure

Garry Coupland
30.11.10

Approved by Council 13.12.10