



BUCKINGHAMSHIRE
NEW UNIVERSITY

EST. 1891



EMPLOYEE CAPABILITY POLICY

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Background

- 1 The University is committed to providing the highest quality service to our staff and students. To achieve this there is an expectation that our staff will perform effectively in their roles. The *Employee Capability Policy* prescribes the University's policy on managing poor performance.
- 2 Capability issues are problems arising where a member of staff is not sustaining the acceptable level of performance needed to meet the requirements of their role in terms of the quantity and quality of work, despite genuine effort. The full range and volume of activities that a member of staff normally undertakes, or is currently undertaking, will be taken into account where there are capability concerns in specific areas.

Purpose Statement

- 3 The policy outlines the University's approach to a fair and consistent means for dealing promptly with an employee's performance when it has been identified as falling below an acceptable level, and the framework that management should follow.

Applicability and Scope

- 4 This policy applies to all employees except those staff that are in their probation period. See next section on dealing with employees that fall under remit of the probation procedure.

Probation

New Employees

- 5 All new employees who are within their first 26 weeks of service with the University will be subject to the probation procedure. The manager will review and assess the employee's performance, capability and suitability for the role at 8, 16 and 26 weeks and, in some cases, 52 weeks. Any performance issues identified during the probation reviews should be dealt with in accordance with the Probation procedure. A clear record should be made of each review meeting and forms are available from the HR Directorate. If at any point during the probationary period managers are concerned about an individual's performance they should seek advice from their HR Business Partner.
- 6 If the employee's performance is satisfactory after the final probation review, the manager will notify the individual employee and a letter of confirmation of appointment will be sent from HR.
- 7 Where an employee's performance while on probation has been unsatisfactory despite support from their line manager during the reviews, and it is thought unlikely that further training or support would lead to a satisfactory level of improvement, the employment may be terminated any point during the probation period. The employee

will be invited to a formal probationary review meeting to discuss their performance during the probation period and the concerns the manager has. After fully discussing the issues, the employee may be notified that their employment will be terminated.

Current Employees

- 8 If an employee's employment is terminated after the expiry of the probationary period, or if the employee is an existing employee who has been transferred or promoted into a different role, the University's *Employee Capability / Disciplinary Policy and Procedure* must be followed instead.

Responsibilities

- 9 Each member of staff is expected to familiarise themselves with the policy and to take responsibility for their performance and continued professional development in their post. They are advised to seek help and advice from their manager in the first instance on any work related matters or personal circumstances.
- 10 Managers are responsible for ensuring they are familiar with the policy, for making their staff aware, attending training and to seek advice at the earliest opportunity. . Managers should meet with their staff regularly to discuss work issues, offer support and advice on work related matters to avoid issues arising. They should comply with the procedures set out in the policy, including making reasonable attempts to resolve any problems in an informal manner, agreeing objectives and giving reasonable time for improvement where relevant and taking into account Equality, Diversity and Inclusion (EDI). Ideally, managers will address/pre-empt issues before they escalate into a formal issue.
- 11 The HR Business Partner can provide advice to managers and staff on the implementation of this policy, undertake management referrals to Occupational Health and advise when to invoke the *Employee Disciplinary and / or Managing Sickness Absence Policy and Procedure*. The policy will be maintained, monitored and updated accordingly in line with any organisational or legislative changes.
- 12 Trades Unions have an important role in providing advice, support and working in partnership with managers and the HR Directorate to ensure that the policy is implemented.

Definitions

- 13 **Capability** refers to an individual's ability to perform the work expected of them to the required standards and is defined by the Employment Rights Act 1996, s. 98(3) (a) as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'.
- 14 **Conduct** refers to issues relating to where an employee appears to be negligent; careless; demonstrates poor time keeping or absence which is not fully explained; or wilfully refuses to follow procedures or instructions. The *Employee Disciplinary Policy* should be used in these instances.

- 15 **Probation** is the process of assessing the suitability and ability of new employees to successfully deliver in their new role. All new professional service employees and academic employees with less than 12 months' experience in Higher Education are subject to a six month probationary period. Managers will monitor the employee's work throughout the probation period.
- 16 **Right to be accompanied** by a colleague or trade union representative to formal meetings.
- 17 **Days** means working days, which for the purposes of this policy is Monday to Friday other than bank holidays or other days when the University is closed to all employees and students.
- 18 **Performance Improvement Plan** is designed to improve the employee's performance when identified as falling below an acceptance level and sets out a reasonable timescale in which performance is expected to improve.
- 19 **Bucks Performance Development Review (PDRs)** is a University wide process which supports staff in maximising their contribution and furthering their development.
- 20 **Informal Counselling** is how concerns should be raised with the employee to give an opportunity to identify and explain reasons for any poor performance and timescales to make improvements.
- 21 **Bucks Values** stands for D.R.I.V.E values – Dynamic, Responsible, Inclusive, Visionary, Empowering, which are the University's values.
- 22 The **'line manager'** means the immediate manager of the employee. In these procedures sometimes it may be appropriate for an alternative manager to act in their place.
- 23 **'Member of the Senior Management Team'** means any Senior Employee so designated by Council and appointed to the Senior Management Team.
- 24 **'Personal file'** means the individual, confidential employment record, both electronic and paper record, maintained for each employee and held by the Human Resources Directorate.
- 25 The **'Senior Manager' or 'relevant Senior Manager'** means the Deputy Vice-Chancellor, Pro-Vice Chancellor, Director or Head who has overall responsibility for the School/Service in which the employee works.
- 26 **'Senior Employees'** means the holders of senior posts, under the Articles of Government, as designated from time to time by Council.

Principles

- 27 An employee will not normally be dismissed because of incapability unless:
- A full investigation has taken place
 - Opportunities to improve have been given over a reasonable timescale
 - The employee has been formally warned that their job is at risk
 - Suitable alternative work is not available, or has been unreasonably refused

In the case of a recently promoted employee, suitable work could be a post at their previous level and their salary would be adjusted accordingly.

- 28 An employee has a right to be accompanied under the formal procedure by their Trades Union representative or work colleague. Where an employee is accompanied, the representative can address the meeting to put across/sum up the individual's case/evidence; respond to any views which have been expressed by others; and confer with the individual. However, they may not answer a question on behalf of the individual.
- 29 At all stages of the procedure, an employee may also be accompanied by an appropriate person to provide support in the case of disability or language issues.
- 30 If a capability problem relating to an employee's qualification to work makes it impossible to carry out their job, an employee may be dismissed under these procedures if no reasonable redeployment opportunity exists.
- 31 An employee has the right of appeal against any warnings given under these procedures or against dismissal.
- 32 If an employee fails to attend a formal meeting under these procedures without good reason, a decision may be taken in their absence.
- 33 These procedures will operate within the context of the University's Equality, Diversity and Inclusion policies and schemes.
- 34 A note taker will always be present at formal meetings and notes taken. Only in exceptional circumstances will a formal meeting be recorded and this will only be allowed with the agreement of all parties.

Reducing the risk of Capability / Poor Performance Issues

- 35 The need to deal with poor performance will be reduced through some of these areas:

Recruitment, Promotion, Secondment or redeployment	Careful consideration should be given to job design and requirements. Ensuring that following probation, secondment or redeployment employees are made aware of the new standards of performance required and given any necessary training to assist them to achieve these.
Induction	Introducing new employees to the University is important. Managers should ensure they carry out a local induction in the School / Directorate and ensure employees are booked to attend the employee induction programme details (where appropriate), which are available from the Learning and Development Team in Human Resources.

Newly promoted employees	Newly promoted employees should continue to be reviewed to ensure any areas of concern are addressed.
1:1 meetings	It is recommended that managers have 1:1 meetings with the employees that they line manage to provide an opportunity for any concerns to be raised, including the setting and agreeing of actions. The frequency of these meetings will be dependent on the needs of both parties.
Probation linked to the university current process	All new employees are subject to a six month probationary period and this may be terminated, with notice, if any aspect of their attitude, ability or aptitude proves to be unsatisfactory. Employees will be met with after 8 weeks, 16 weeks and 26 weeks or sometimes after 52 weeks to confirm whether the probation stages have been made. HR will confirm upon receipt of the documentation that probation stages have been completed. Where there are concerns, advice should be sought from the HR Directorate (see <i>Guide to Induction and Probation for Line Managers</i> and <i>Guide to Induction and Probation for New Employees</i>).
Bucks PDR cycle linked to the business planning process, Bucks Academic / Professional Frameworks and University and Bucks People 2022 strategy	Employees have a personal responsibility to perform their role and actively participate in the Bucks PDR cycle and the setting of objectives. Any performance issues should be addressed under this policy as soon as possible, and not addressed under the Bucks PDR process.
Learning and Development	Employee training and development needs should be reviewed regularly through the PDR process ensuring continuous professional development in line with the organisational objectives.

What are the reasons for Poor Performance / Capability

36 There are many reasons for poor performance, which can include:

- a lack of understanding on the employee's part about their duties, priorities or goals because they have not been explained properly or they have not had feedback provided to them.
- poor systems of work;
- inadequate or insufficient training;
- inadequate procedures;
- tools and equipment that do not work properly or frequently break down;
- poor quality or inadequate supervision.

- 37 Line managers can reduce the risk of poor performance / capability through some of the points outlined below. However, managers have an important role in setting clear standards of performance/capability, by informing employees about what is acceptable and expected of them, and by providing regular feedback on their performance.

Sources of health and wellbeing support

- 38 The University provides health and wellbeing support for its staff including:
- An internal free Counselling Service which is available for all employees. For further information or to book an appointment please contact the Counselling Service on extension 5018.
 - A confidential Employee Assistance helpline which is available 24/7 and details on how to access this service can be found [here](#).
 - Access to Occupational Health through a management referral. For further details contact the HR Directorate.
 - Access to the 'Big White Wall' which is a digital mental health online support service offering 24/7 safe support and is completely anonymous - <https://www.bigwhitewall.co.uk/>
- 39 Alternatively, employees can contact their line manager, Trades Union representative or the Human Resources Directorate for further advice.

Mediation

- 40 If during the capability process both parties feel that there would be value in seeking mediation then this could be considered. The University has a number of staff trained as mediators who are available to mediate between employees with a view to identifying a mutually acceptable resolution of the issues involved. Requests for the involvement of a mediator should be made through Human Resources on humanresources@bucks.ac.uk
- 41 Mediators will use their skills to assist, but will not dictate, monitor or enforce any agreement. A record of the agreement will only be kept with the consent of both parties.

Ill Health and Disability

- 42 A member of staff's capability to carry out their role to the required standard may be affected by their health and level of absence from work. In such circumstances, it may be more appropriate to manage the matter under the *Managing Sickness Absence Policy and Procedure*.
- 43 Line managers must bear in mind the provisions of the protected characteristics, in particular the obligation to make reasonable adjustments when supporting members of staff with a disability.

- 44 Throughout the capability procedure, the work of the member of staff will be considered in the light of any adjustments that have been agreed by their line manager.

Exceptional Circumstances

- 45 There may be exceptional circumstances where it will be necessary to escalate to a later stage of the procedure. Advice must be sought from the HR Business Partner prior to taking this action.

Informal Performance Improvement Stage

- 46 When underperformance has been identified, managers should discuss the specific examples with the employee to give them the opportunity to respond. This meeting will be between the manager and the employee only.
- 47 The manager should, in conjunction with the employee, draw up a performance improvement plan (see **Appendix 1**) using the principles of SMART (Specific, Measureable, Achievable, Realistic and Time-Bound) objectives. This will outline the areas for improvement; the level of improvement that is required; objectives and actions to be taken; responsibility for the actions; any support that is required and a timescale for when it will be achieved. This will be confirmed in writing and set out a reasonable timescale in which performance is expected to improve.
- 48 Managers will set a reasonable period for improvement, normally no longer than 8 weeks and explain the types of outcome. In exceptional circumstances, this may be extended but advice should be sought from the designated HR Business Partner. For example no further action; some improvement with informal counselling is extended, and, if no improvement, move to Stage 1 / 2 for potential formal action.

Formal Procedure for Dealing with Performance

Stage 1 – First Formal Capability meeting

- 49 A formal Capability meeting will be arranged if performance does not meet the acceptable standards, and informal performance improvement or other interventions are either not considered appropriate or have not already succeeded in addressing the problem at the informal stage. The line manager or another member of management from within the School / Directorate will meet the employee to discuss the issues, having given the employee 10 working days' written notice of the meeting.
- 50 The designated HR Business Partner will normally attend the meeting in an advisory capacity, and they will arrange the note taker. The employee may be accompanied by a Trade Union (TU) representative or a work colleague. If no satisfactory explanation is given by the employee, they will be advised of the required improvement in performance; timescale for improvement support offered; consequence of not meeting performance targets; date of the first formal review meeting; right of appeal and any

alternative proposed action such as redeployment. A performance improvement plan will be drawn up using **Appendix 1**.

- 51 A letter confirming the above will be sent to the employee by the senior manager or nominee within 10 working days of the meeting and a copy of the notes will be sent where requested. This letter will constitute a first written warning and a copy will be retained on the employee's Personal File for a period of twelve months.

In some cases of significant incapability, the employee will be notified that an outcome of their first formal capability meeting may be a final written warning (i.e. even when a first written warning is not live on file).

Stage 2 – Formal Capability meeting

- 52 If there is little or no improvement to performance within the prescribed time, having given the employee 10 working days' written notice, a further formal meeting will be arranged. This will be conducted by the line manager or another member of management from within the school/directorate. The designated HR Business Partner will normally attend the meeting in an advisory capacity and will arrange the note taker. The employee may be accompanied by a representative (either a TU representative or a work colleague).
- 53 At the meeting, a comprehensive review of the circumstances and the actions taken to date will be undertaken. If evidence indicates that the performance has improved, no further action will be necessary.
- 54 If the employee has not met the performance objectives agreed within the timescale (i.e. performance improvement plan) set at the first formal meeting, or if there has been a failure to sustain these improvements and no satisfactory explanation for the poor performance is given). They will be advised of the required improvement in performance; timescale for improvement; support offered; consequence of not meeting performance objectives; date of the second formal review meeting; right of appeal and any alternative proposed action such as redeployment.
- 55 A letter confirming the above will be sent to the employee by the senior manager or nominee within 10 working days of the meeting and a copy of the notes will be sent where requested. This letter will constitute a second and final written warning and a copy will be retained on the employee's Personal File for a period of twelve months.

Formal Review meetings

- 56 The formal review meetings are an opportunity for performance to be reviewed to ensure satisfactory progress has been made. The employee has the right to be accompanied by a work colleague or trade union representative to formal meetings. If the manager feels that progress has been insufficient, they may decide to extend and/or amend the performance improvement plan to such extent as the manager considers appropriate. Alternatively, the manager may decide to refer the matter to a meeting under stage 3 of this procedure.

Stage 3 – Employee Capability Hearing

- 57 If there is little or no improvement to performance within the prescribed time, the line manager or another member of management from within the school/directorate will review the facts of the case and will convene an employee capability hearing / meeting

with the member of staff to review performance. An HR Business Partner will be present to provide advice and the employee will have the right to representation either with a Trade Union representative or a work colleague.

- 58 The employee will then receive a minimum of 10 working days' written notice of a final formal meeting and be advised that one of the outcomes may be dismissal from the University's service.
- 59 At the meeting, a comprehensive review of the circumstances and the actions taken to date will be undertaken. If evidence indicates that the performance has improved, no further action will be necessary other than regular review meetings between the employee and the line manager. If there is no evidence of improvement, the employee will be advised that their employment may be terminated with notice. Under Article 9 of the Articles of Government 2010, the employee or their representative will be given an opportunity at the meeting to make a full statement of the case against dismissal. The employee will also be told of their right of appeal.
- 60 In some circumstances, as an alternative to dismissal, redeployment to an appropriate role may be considered providing such suitable alternatives become available within the notice period. This may include a role at a level below that at which the employee currently works, with assimilation to the new role and grade and an appropriate salary adjustment.
- 61 After consultation with the HR Director or nominee, the chair of the meeting will confirm the decision to dismiss the employee in writing and give details of their right of appeal.

Appeal Procedure

Appeal against action short of dismissal

- 62 The employee has the right to appeal against warnings issued at the first or second formal meeting and any action imposed by the Employee Capability Hearing.
- 63 An appeal against action short of dismissal should be made in writing to the HR Director within 10 working days of receipt of the letter conveying the outcome of the meeting and stating clearly the grounds for appeal. This should be signed by the employee.
- 64 The employee must submit appropriate evidence and the names of any witnesses in support of their appeal.
- 65 A panel comprising the Vice-Chancellor or nominee and another member of the Senior Management Team who has not had any prior involvement in the case will be convened by the HR Director or nominee within 10 working days of receiving the appeal. A note-taker will be appointed. The employee has the right to appear before the panel in person, accompanied by their representative, to state their case.
- 66 The decision reached will be final and will be conveyed in writing to the parties concerned within 10 working days.

Appeal against dismissal

- 67 Employees have the right to appeal to an Employee Appeals Panel which includes members of the University Council. This should be made in writing to the University Clerk to the Council within 10 working days of receipt of the letter conveying the outcome of the hearing and stating clearly the reasons for the appeal and supporting evidence.
- 68 The constitution of the panel and process are outlined in **Appendix 2**.

Complaints

- 69 If a grievance is lodged during an on-going capability matter, advice should be sought from Human Resources to ascertain if it has a direct bearing on the process. This may delay on-going proceedings, and the expectation is that this would be dealt with after the conclusion of the capability processes or, if appropriate, run concurrently with it.

Monitoring

- 70 The *Employee Capability Policy* will be monitored by the Human Resources Directorate and will provide updates to the Senior Management Team as part of regular KPI reporting.

Appendices

Appendix 1: Performance Improvement Plan

Name		Job Role	
School / Directorate		Reviewing Manager	
Timeframe		Review meetings will take place every <number> of weeks	

Problem / issue identified	Objective	Success Criteria (Outcome required)	Resources / processes to support	Timeframe	Person Responsible
				Date	
				Date	
				Date	

Employee Signature		Date	
Line Manager Signature		Date	

Appendix 2: Employee Appeals Panel

Constitution of the Employee Appeals Panel

1. An Employee Appeals Panel is made up of two Independent or Co-opted Council members, both of whom will have senior management experience and a member of the University's Senior Management Team who has had no previous involvement in the case.
2. The employee and student Council members may not be members of the panel. The Chair of the Panel is appointed by the Chair of Council or the Deputy Chair. The Secretary to the panel is the University Clerk to the Council. A note taker is appointed by the University Clerk to the Council or the Human Resources Directorate.
3. Where the employee at the Capability Hearing is a member of the Senior Management Team, please refer to the Governance Handbook Boards and Committees regarding the constitution of the Senior Employee Special Committee.
4. The process for calling a meeting of the Employee Appeals Panel is outlined in **Appendix 3**.

Calling an Employee Appeals Panel

5. The University Clerk to the Council arranges for the panel to meet as soon as possible, normally within 20 days of receiving the statement of appeal.
6. The University Clerk to the Council invites the Vice-Chancellor to nominate a management representative to represent the University's case for dismissing the employee, who would normally be the Chair of the Capability Hearing. The employee's statement of appeal is sent to the management representative. The employee has the right to be accompanied at the meeting by their trade union representative or a work colleague. This cannot be either a member of the legal profession or a family member.
7. At least 7 days before the panel is due to meet, the University Clerk to the Council notifies all parties of the time, date and venue of the appeal hearing. If the employee or their representative cannot attend on that occasion then a further opportunity is provided for the panel meeting. If, without good reason, the employee is unable to attend a second time, the appeal may take place in the absence of the employee.
8. The University Clerk to the Council invites the University's management representative to respond in writing to the employee's initial statement of appeal, to collate written evidence and call witnesses to support the case for dismissing the employee.
9. The University Clerk to the Council invites the employee to add to their statement of appeal, to collate written evidence and to call witnesses to support their appeal against dismissal.
10. The University Clerk to the Council sends the statement of appeal and all the information in above to the members of the Panel, the employee and the University's representative at least 5 days before the meeting of the Panel.

Proceedings of the Employee Appeals Panel

11. The proceedings of the panel are not invalidated by the absence of the employee, their representative, the University's management representative or any witnesses if they have been given a reasonable opportunity to be present.
12. No other person attends the meeting of the panel than those mentioned above.
13. The Chair of the Panel conducts the proceedings in an efficient way, while safeguarding the fairness of proceedings. Subject to allowing a full airing of views, he or she may guide the participants in minimising repetitious, irrelevant or frivolous evidence.
14. The Chair determines the order of proceedings which is outlined in Appendix 3.
15. At the request of the employee, University management representative or panel member, the meeting may be adjourned for a period of time agreed by all parties.
16. The Employee Appeals Panel has delegated authority from Council to decide on one of the following outcomes:
 - a) confirm the decision to dismiss the employee;
 - b) confirm the decision to dismiss the employee subject to such conditions as the panel may determine;
 - c) rescind the decision to dismiss the employee; or
 - d) rescind the decision to dismiss the employee subject to such conditions as the panel may determine.
17. Having reached its judgement on the facts, the panel takes the employee's statement of mitigation and references of good character into account and confirms or modifies the outcome.
18. The panel reaches its final decision by a simple majority and, if time allows, this is relayed orally to the employee, their representative and the University management representative as soon as the decision has been made. If this is not possible, the decision will be confirmed in writing within 10 working days of the meeting.
19. The University Clerk to the Council arranges for a formal record of the proceedings to be made, to be confirmed by the panel, taking into account comments on factual accuracy by the employee, their representative and the University management representative. A copy of the record is sent to all participants. In the case of actions to be taken the Academic Secretary and Registrar to the Council issues the confirmed decision before completing the full record of the proceedings.

Appendix 3: Outline agenda for Employee Based Appeal Hearing

- a) the employee states their case
- b) the employee calls witnesses in turn whom any panel member or the University management representative may question
- c) the University management representative states the University's case
- d) the University management representative calls witnesses in turn whom any panel member or the employee may question
- e) the employee, their representative and University management representative ask questions of each other and make responses
- f) the Academic Secretary and Registrar to the Council asks questions where further clarification is needed
- g) the Chair sums up the evidence and asks the parties to make a final statement
- h) the University management representative sums up and makes a final statement
- i) the employee sums up and makes a final statement; this may include statements of mitigation
- j) the panel retires into closed session to consider its decision