

## **Employee Relations Framework**

### **Capability Policy**

#### **1 Introduction**

This Policy is part of Employee Relations Framework, which is made up of a number of elements which together encompass all formal policy, procedure and statement documents, including associated forms, relating to employee relations in Abertay University (the "University"). If you would like this document in a different format (e.g. large print, braille) or need any assistance to access or understand the policy/procedure please contact your School/Service designated HR Partner.

This procedure does not form part of any employee's contract of employment and it may be amended at any time. The University may also vary any parts of this procedure, including any time limits, as appropriate in any case. This procedure applies to all employees regardless of length of service. However employees within their probation period will be managed under the University's Probation Policy.

#### **2 Purpose and Scope**

Where a capability issue arises, the primary aim of this procedure is to:

- a) provide a framework within which managers can work with employees to maintain acceptable performance standards and to encourage improvement where necessary;
- b) improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on a development plan which is mutually agreed to reach the required standards;
- c) ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues;
- d) support managers in carrying out their responsibilities for the maintenance of acceptable standards of work performance by all employees.

This policy is used to deal with poor performance for reasons other than ill health. It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases reference should be made to the appropriate policy or procedure.

#### **3 Informal Stage**

Before employees can be expected to reach appropriate standards of job performance, the University accepts they should be provided with appropriate training, guidance and support. Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-one meetings or through Pathways meetings. It is expected that the majority of performance related issues will be resolved at an informal stage. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to clarify the required standards, identify areas of concern, establish the likely causes of poor performance and identify any training needs and/or set targets for improvement and a time-scale for review.

If there are concerns about the employee's performance, the line manager will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing their personnel file including pathways records, gathering relevant documents, monitoring work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding their work. The employee concerned will be made aware that these conversations are taking place.

During this informal stage, the manager will provide the necessary advice, coaching, guidance and support in addition to developing with the employee (where appropriate) a Performance Improvement Plans in order to support the individual in attaining the required standards. Progress made by the employee against the Performance Improvement Plan will be reviewed on a regular basis. The outcome of these reviews will determine whether it is necessary to progress to the formal stage of the procedure.

#### **4 Formal Capability Hearing**

If the employee's performance has not improved following informal discussions and/or the University considers that there are grounds for taking formal action over alleged poor performance, a capability hearing will be arranged. The employee will be notified in writing of the concerns over their performance and the reasons for those concerns. The employee will also be provided with the following where appropriate:

- a) a summary of relevant information gathered as part of any investigation;
- b) a copy of any relevant documents which will be used at the capability hearing;
- c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the employee will be given as much information as possible.

The employee will be given written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but the employee will be given 10 days to prepare their case based on the information been given.

If the employee or their companion cannot attend the hearing they should inform the University immediately and usually an alternative time will be arranged. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If they fail to attend without good reason, or are persistently unable to do so (for example, for health reasons), the University may have to take a decision based on the available evidence. The hearing will be held by the line manager or a more senior manager if appropriate, and will be attended by a member of the Human Resources Department.

The aims of a capability hearing will be to:

- a) set out the required standards that the University believes the employee has not met, and go through any relevant evidence that they have gathered;
- b) allow the employee to ask questions, present evidence, respond to evidence and make representations;
- c) establish the alleged causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- d) identify whether there are further measures, such as additional training or supervision, which may improve performance;
- e) where appropriate, discussing and agreeing targets for improvement and a time-scale for review;
- f) determine whether performance is satisfactory and, if not, the appropriate action to be taken e.g. giving a warning.

##### **4.1 Stage 1 Hearing – First Written Warning**

Following a Stage 1 capability hearing, if it is decided that the employee's performance is unsatisfactory, the employee will be given a development plan and first warning, setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) agreed targets for improvement with details of how and when they will be assessed;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a period for review and a time frame for review may vary depending on nature of the job and tasks being asked to improve on, they normally range from two weeks to two months;
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The employee's performance will be monitored, with feedback provided during the review period and the University will write to inform them of the outcome:

- a) if the line manager is satisfied with their performance, no further action will be taken;
- b) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.
- c) if the line manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or

The warning will normally remain active for six months after which time it will be disregarded for the purposes of the capability procedure.

#### **4.2 Stage 2 Hearing – Final Written Warning**

If the employee's performance does not improve within the review period set out in the development plan, or if there is further evidence of poor performance while the first warning is still active, the University may decide to hold a Stage 2 capability hearing. The employee will be sent a written notification of the Stage 2 capability hearing.

Following a Stage 2 capability hearing, if the University decides that the employee's performance is unsatisfactory, the employee will be given a final written warning, setting out:

- a) the areas in which the employee has not met the required performance standards;
- b) targets for improvement;
- c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- d) a period for review, the time frame for review may vary depending on the nature of the job and tasks being asked to improve on, they normally range from two weeks to two months.
- e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The employee's performance will be monitored during the review period and the University will write to inform them of the outcome:

- a) if the line manager is satisfied with the employee's performance, no further action will be taken;
- b) if the line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

A final written warning will normally remain active for 12 months.

#### **4.3 Stage 3 Hearing – Possible Redeployment or Dismissal**

The University may decide to hold a Stage 3 capability hearing if it has reason to believe:

- a) the employee's performance has not improved sufficiently within the review period set out in a final written warning;
- b) the employee's performance is unsatisfactory while a final written warning is still active;  
or
- c) the employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

The University will send out written notification of the hearing. Following the hearing, if the University finds that the employee's performance is unsatisfactory, it may consider a range of options including:

- a) giving a final written warning (where no final written warning is currently active)
- b) extending an active final written warning and setting a further review period (in exceptional cases where it is believed that a substantial improvement is likely within the review period);
- c) redeployment into another suitable job, if available;
- d) dismissal

Dismissal will normally be with full notice or payment in lieu of notice. In exceptional cases where a performance error has serious consequences the procedure for gross misconduct as outlined in the Disciplinary Procedure may be followed.

## **5 Appeals**

An employee has the right to appeal against any formal action taken against them in line with this policy and must do so by writing to the Director of Human Resources and Organisational Development, within 5 working days of the date of receipt of written confirmation of the action taken against them, stating their grounds for appeal.

The employee's appeal will be heard by the next level of management and a HR Partner. The employee is entitled to be accompanied to an Appeal Hearing (see section 6.2). The University will send out written notification of the appeal hearing. An appeal will be held as soon as is practical to do so. The appeal decision will be provided in writing; the decision made on appeal shall be final. Where an appeal is upheld, reference to the caution or dismissal will be disregarded. Alternatively, the outcome of the appeal hearing may be to impose a lesser penalty e.g. a final caution instead of dismissal, or to shorten the period for which the caution was originally issued. The outcome of the appeal will be set out in a letter to the employee. If an employee is successful in appealing against summary dismissal, they will be paid in line with their contract of employment in respect of the period from dismissal to reinstatement, as if the dismissal had never taken place.

## **6 Right to be accompanied**

An employee has the right to be accompanied by a recognised trades union representative, Abertay staff representative or current work colleague employed by the University at all formal stages of this procedure, including an appeal. For the avoidance of doubt, legal representation or representation by anyone outside of this group is not permitted. The University may permit the employee to bring a companion who is not a work colleague or recognised trades union representative (for example a family member or interpreter) if this will help overcome the effect of any disability or if the employee has difficulty in understanding English, but this does not extend to a legal representative. Any formal meetings with the employee will be rescheduled if the chosen companion cannot attend and providing the employee proposes an alternative date and time within 5 working days of the original date. The companion is permitted to confer with the employee and address the Hearing by making representations or asking questions, but not to answer questions that are directly put to the employee. They must also not interfere with, or prevent people from contributing to the hearing.

## 7 Disabilities

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to an employee's working arrangements, including changing duties or providing additional equipment or training. The University may also consider making adjustments to this procedure in appropriate cases, and will also consider other related policies e.g. Absence Management Policy. The Equality Act 2010 will also be adhered to in relation to reasonable adjustments.

If you wish to discuss this or inform us of any disability or health condition you consider relevant, you should contact your line manager or the School/Service designated HR Partner.

## 8 Confidentiality and Data Protection

The University aims to deal with capability matters sensitively and with due respect for all individuals involved. All documentation relating to the capability procedure will be retained within Human Resources and will be held and processed in accordance with the Data Protection Act 1998. Employees (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.

All employees must treat as confidential any information communicated to them in connection with the capability procedure. Any breach of confidentiality may result in disciplinary action.

### Document Information

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### Version Control Table

Version No.	Purpose / Changes	Author	Date
1.0	New Policy	Human Resources	Nov 2013
1.1	Updated logo and format; slight amendments to give more clarity in relation to formal procedures and minor editing.	Human Resources	Mar 2014

1.2	Update to policy further to Union consultation.	Human Resources	Jan 2015
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