

Ordinance 11.4 – Capability and Performance

Part I – Application and scope

This Ordinance shall apply in circumstances where a member of staff's capability of performance in undertaking his or her role are to be reviewed.

The length of any warning that may be issued pursuant to this procedure will be in accordance with ACAS guidance from time to time.

1. Where at any stage of proceedings being taken under this ordinance it emerges that the member of staff's performance or capability may have been wholly or partly influenced by a clinical condition, the person(s) dealing with the matter may, at their discretion and if they consider it appropriate, adjourn any meeting or hearing in order to obtain such reports and advice as they may deem necessary. They may also, at their discretion, determine whether:
 - (i) to halt the proceedings under this ordinance and transfer the matter to the appropriate stage of the ordinance for the review of members of staff demonstrating incapacity on health grounds; or
 - (ii) to continue with the proceedings under this ordinance, taking into account as appropriate the member of staff's clinical condition. In such circumstances, the person(s) dealing with the matter may invite to any meeting or hearing, for the purpose of advising him/her, an appropriately clinically qualified person who has had no previous involvement with the case under consideration. Such person shall be appointed by the People Services Director or a member of the People Services Senior Leadership Team, having first consulted an appropriate member of the Occupational Health Service.
2. Issues of unsatisfactory performance will normally be dealt with through review and discussion between the line manager and the member of staff, and this ordinance will be used only where the failure to reach a satisfactory level of performance is significant or persistent.

Part II – Informal Procedure

3. When a member of staff's performance gives rise for concern, his/her line manager will conduct such investigation as is considered necessary. In exceptional

circumstances this may be conducted by a more senior leader within the Faculty/ Directorate. The line manager, or in exceptional circumstances a more senior leader within the Faculty/ Directorate, shall inform the member of staff that an investigation is taking place and shall normally interview the member of staff. The purpose of the investigation shall be to obtain information and assemble evidence as to the nature and likely causes of the poor performance.

4. In cases of minor lapses in performance, or lapses identified on investigation as being uncharacteristic, transitory or arising from misunderstood expectations, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate may issue informal advice and guidance to the member of staff. This may include identifying appropriate training, support and mentoring to help the member of staff improve their performance. This discussion and its outcome should be noted. Notes should not be kept longer than necessary, once improvements have been made.
5. If the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate still has concerns about the member of staff's performance or where lapses in performance are more serious, he/she shall bring the matter to the member of staff's attention and a review shall be conducted. A meeting will take place with a view to securing improvement to the standards required.
6. The meeting shall be informal and constructive to allow the member of staff an opportunity to express his/her opinion and for the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate to determine whether there are any external factors which may be contributing to the poor performance.
7. After the meeting an agreed action plan shall be provided in writing to the member of staff. The plan shall contain a summary of the improvement(s) required, the target(s) and timescales(s) over which these are expected to be achieved and any appropriate training or support that will be provided, as well as the potential consequences of not achieving the targets in the required timescales, for example moving to the formal procedure.
8. Continued monitoring shall take place by the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate for a period of time, normally up to three months depending on the requirements to improve performance. It is anticipated that in the majority of cases, no further action will be necessary.

Part III - Formal Procedure

Stage 1 - Capability Meeting

9. Where the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate's investigation suggests that the member of staff's poor performance is such as to warrant a formal approach (in, for example, cases where poor performance may be deemed dangerous) or where the normal process of informal action or counselling have proved ineffective, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate shall convene a formal capability meeting with the member of staff.

10. The line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate shall write to the member of staff inviting him/her to the meeting. The letter shall include:-
- (i) a statement of the grounds that have led to the requirement for the meeting, including full details of the perceived inadequate performance;
 - (ii) any supporting information and evidence;
 - (iii) the date, time and location of the meeting;
 - (iv) The name of any person accompanying the manager (e.g. a member of the People Services Directorate);
 - (v) the fact that the meeting is taking place under Stage 1 of these procedures;
 - (vi) the right of the member of staff to attend and to be accompanied by a work colleague or a trade union representative;
 - (vii) a copy of this ordinance.
11. The purpose of the capability meeting shall be to explain the shortcomings in the performance of the member of staff, to identify those factors contributing to the inadequate performance and to establish a timetable and targets for improvement supported by a plan of action. This may include identifying appropriate training, support and mentoring to help the member of staff improve their performance. The member of staff will be given an opportunity to give their opinion before a decision as to what action should be taken is made.
12. After the meeting, and if deemed appropriate, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate shall issue an oral or written warning to the member of staff that makes it clear that his/her job is at risk if improvement is not achieved and providing details of any support that will be given. A plan of action will normally set out the improvements required. The potential consequences of not achieving the targets in the required timescales, for example moving to Stage 2 of the formal procedure will be explained.
13. This warning and action plan shall be recorded in writing with a copy to be sent to the member of staff. Copies will also be placed in the member of staff's personal file.

Stage 2 - Capability Review Meeting

14. If it is considered that the member of staff has not met the required improvements by the conclusion of the review period (or sooner if the inadequate performance is worsening), the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate shall write to the member of staff inviting him/her to a capability review meeting. The member of staff will receive notice in writing of

this meeting and its purpose. The line manager's letter shall include details corresponding to those set out in clause 10 above appropriately modified to reflect the position at stage 2.

15. At the conclusion of the capability review meeting, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate decide what action, if any, needs to be taken and will confirm their decision in writing to the member of staff.
16. Where there continues to be a significant shortfall from the performance improvement targets set by the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate may have recourse to the University's conduct ordinance where it is believed that the continuing poor performance is as a result of the conduct or wilful non-achievement of the member of staff. Where it is believed that a lack of capability continues to underlie the member of staff's poor performance, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate will issue a final written warning referring to the member of staff's possible termination of employment, together with a further plan of action and period of review. The potential consequences of not achieving the targets in the required timescales, for example moving to Stage 3 of these procedures will be explained. This will be recorded in writing to the member of staff.

Stage 3 - Further Capability Review Meeting

17. If the member of staff does not improve as specified in the final written warning issued under Part III Stage 2 above, the line manager or in exceptional circumstances a more senior leader within the Faculty/ Directorate may refer the matter for consideration to the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor. (N.B. Matters relating to gross negligence should be dealt with through the conduct ordinance.)
18. Before any decision is taken to proceed with formal action under Stage 3, the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor shall designate another person to review the circumstances of the case (the 'Investigating Manager') and shall inform the member of staff accordingly.
19. The Investigating Manager shall undertake such enquiries as he or she deems to be appropriate with a view to obtaining information and assembling evidence as to the nature and likely causes of the alleged poor performance. The Investigating Manager shall normally interview the member of staff. The Investigating Manager shall report his/her findings to the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor, who shall determine whether or not there are grounds to continue with this stage of the procedures. If not, the Vice-Chancellor

or an appropriate senior officer appointed by the Vice-Chancellor shall inform the member of staff, in writing, accordingly.

20. If the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor decides that there are grounds to do so, the Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor shall invite the member of staff to the the Formal Capability Panel meeting in writing in advance. The letter shall include:
 - (i) a statement of the grounds that have led to the meeting being called including full details of the alleged poor performance;
 - (ii) any supporting information and evidence;
 - (iii) the date, time and location of the meeting;
 - (iv) the fact that the meeting is taking place under Stage 3 of these procedures;
 - (v) the right of the member of staff to be accompanied by a work colleague or a trade union representative;
 - (vi) a copy of this ordinance.
21. The Formal Capability Panel shall consist of up to three members, including a senior officer nominated by the Vice-Chancellor as Chair, and up to two other members nominated by the Chair, who may be members of staff, members of Council or external members.
22. The Vice-Chancellor or an appropriate senior officer appointed by the Vice-Chancellor and/or the Investigating Manager will be asked to attend the Formal Capability Panel to explain why s/he has recommended that the matter be referred for consideration by a Formal Capability Panel. The member of staff will be given the opportunity to state his or her case and raise any factors which he/she wishes to have considered.
23. Subject to the above, the conduct of the hearing before the Formal Capability Panel and any adjournments will be at the discretion of the Chair of the Formal Capability Panel.
24. The Formal Capability Panel will deliberate in private. Normally a unanimous decision will be expected, but if the members of the Formal Capability Panel cannot agree, the decision of the Panel shall be that of the majority of its members. The Formal Capability Panel shall give a reasoned decision in writing, which shall be sent to the member of staff within 14 days or otherwise as soon as is reasonably practical.

25. The Formal Capability Panel may impose the following sanctions (and in relation to (i) to (v) below, in any combination):
- (i) a written warning or final written warning: if such warning is given, the period during which the warning will remain active shall be determined at the time of the hearing and shall be notified in writing to the member of staff;
 - (ii) as an agreed alternative to dismissal, the award of a reasonable sum by way of compensation, either to the University or to an individual, in respect of identified and quantified loss;
 - (iii) the withholding of any forthcoming increment of salary;
 - (iv) the demotion to a post of lower grading;
 - (v) the removal of any title or office held in addition to the substantive appointment;
 - (vi) dismissal (without notice in the case of gross negligence);
 - (vii) a discussion between the Vice-Chancellor or appropriate senior officer appointed by the Vice-Chancellor and the member of staff concerned in order to give advice as to future performance.

The decision and sanction of the Formal Capability Panel will be communicated in writing to the member of staff by the Panel Chair with the right of appeal also explained.

26. If, having considered the evidence, the Formal Capability Panel is satisfied that no action is appropriate, the Chair shall so inform the member of staff and shall confirm this by letter.

Part IV - Appeals

27. The member of staff will have the right to appeal against any decision made under this ordinance. The grounds for appeal must be in writing and must be sent to the Vice-Chancellor's Office. All appeals shall be lodged and conducted in accordance with the University's ordinance for appeals.