

Capability Policy and Procedure

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Human Resources

This policy will be reviewed periodically to ensure compliance with changes in employment law and equality and diversity legislation. In the event that this policy or procedure is not so compliant, the relevant legislation shall prevail.

Changes to this policy will be subject to consultation and agreement with the University's recognised Trade Unions before implementation

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1. Introduction

The success of the University depends on the effective contribution from all employees, however performance problems can and do arise. This policy establishes a framework and procedural guidelines for Managers and staff in relation to the management of capability/under performance/poor-performance in a fair, supportive and consistent way, to encourage improvement.

The Procedure aims to:

- Demonstrate that the University is committed to supporting and developing its staff, to ensure staff are able to fulfil and maintain their duties and responsibilities to an agreed standard of competence
- Provide a means of regular monitoring of performance and setting expectations
- Provide consistency in how staff with differing responsibilities and duties are given opportunities to achieve and maintain satisfactory levels of performance
- Assist in identifying the most appropriate forms of support and providing that support
- Ensure that if a member of staff fails to overcome their difficulties, consequential action will be based on:

Adequate evidence that the staff member is not performing their duties satisfactorily

A fair process

That the staff member has been given all reasonable assistance to overcome such failings

- Provide a mechanism for the dismissal of employees who demonstrate continued unsatisfactory performance, after appropriate support, training and guidance have been given.

This Policy sets out the University's Capability process and procedures to be followed in the handling of capability situations. It indicates the various stages involved in the process, who is involved and why and explains the steps that the Procedure will follow from outset to outcome, including clarification of the right to appeal decisions and the relevant outcomes that may be applied.

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2. Scope

The Policy applies to all staff employed at the University, who have successfully completed their probationary period. It does not apply to casual staff, hourly paid staff, agency workers or contractors.

Those members of staff who have not completed their probation are subject to a separate probationary procedure and will be offered appropriate guidance, training and support in order to achieve satisfactory completion; however, the University reserves the right to invoke the statutory (ACAS) dismissal procedure in cases of alleged serious capability/performance issues. All other cases of capability will be dealt with within the probation procedures.

Where there are procedural variations for different staff groups, these are clearly defined.

Staff with special needs such as language difficulties or disabilities that may prevent them from full participation in the Procedure, will be provided with reasonable adjustment/appropriate assistance.

3. Definitions and expectations of role

Capability is defined in the Employment Rights Act 1996, by reference to the skill, aptitude, health or other physical or mental quality of the employee. For the purpose of this Policy, a lack of capability is 'where a staff member is failing to carry out their responsibilities or duties in a satisfactory manner, due to lack of capability'.

This may include where an individual regularly does not pay attention to details during a work activity, continual mistakes are being made or the standard of work is regularly below the level required.

Staff will be provided with support and training if their existing skills no longer meet the standards required, or they have been unable to develop or maintain the skills and abilities required, including the introduction of new technology. If, despite the necessary training and support being provided within a reasonable timeframe, capability issues remain, then the Capability Policy and Procedure can be applied.

Qualifications

Where a staff member has been recruited on the basis that they will acquire a specific qualification for the role within a reasonable timeframe, and they subsequently fail to do so, this could result in action being taken under this Policy. Qualifications include, but are not limited to, degrees, diplomas, or other academic, technical or professional qualifications, relevant and required to perform the role.

This would also include where a staff member is required as part of their role to hold or obtain a current driving license appropriate to their role.

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Line Manager

A Line Manager/Supervisor/Team Leader is the staff member who has direct managerial responsibility for a particular employee. All Managers with a responsibility for the management of staff will need to be aware of the requirements of this Policy and related Policies and should ensure that their direct reports are familiar with its contents. The raising of Manager's awareness of the requirements of this Policy will be achieved through training and dissemination of the Policy.

Companion who may be a Trade Union Representative

A representative from a Trade Union recognised by the University or an official thereof employed by a Trade Union. A Trade Union representative, who is not an employed official, must be certificated by their Union, and must provide evidence, as being competent to accompany an employee.

Companion who may be a Work Colleague

A member of staff, employed by Brunel University London, who should not be placed in a conflict of interest by accompanying an individual under this Policy.

The companion should be suitable, willing and, ideally, available on site rather than someone from a geographically remote location. The member of staff's chosen companion can act as a witness, take a note of the proceedings, address the meeting/Hearing and confer with the member of staff and sum up the case as necessary. They may not answer questions on his/her behalf, address the Hearing if the member of staff does not wish this, nor prevent the employer from explaining their case.

Witness(es)

A current member of staff who would be asked to provide a statement or confirm notes from an investigation meeting, which would be included within any Management report/Hearing documentation. Witness statements should be concerned with the facts relating to the capability issues and not consist solely of unsubstantiated opinion. To ensure fairness, confidentiality and consistency of the process, anonymous statements will not be accepted. Where a member of the team/department, who is a key witness, is employed by a 3rd party, it could be relevant to include their statement.

Independent Manager

An Independent Manager is one who is, wherever possible, sufficiently detached from the content or detail of the case to be able to give an impartial and unbiased judgment at a formal Hearing as part of the Hearing Panel. This does not preclude the Head of Department or Senior Manager within the Department from participating on the Hearing Panel and the Independent Manager may also be the Head of Department. The role of the Independent Manager is to act as Chair of the Panel, to listen to all information provided and, based on the facts of the case as presented, form a judgment regarding a suitable action or resolution, as agreed with the Hearing Panel. Further, they must

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ensure that all parties have the opportunity to present their case. Where a case goes to Appeal, they will be responsible for presenting the rationale for the Panel's decision to the Appeal Hearing, if requested, whether in person or by correspondence.

Presenting Manager

If a Presenting Manager is nominated, they will prepare and present the case and answer any questions asked of them by the Panel or member of staff/companion at the Hearing. It will not always be the case that a Presenting Manager will be required.

The Respondent

The member of staff against whom the performance concerns have been raised.

The Appellant

The member of staff submitting an appeal.

4. Confidentiality

Matters will be handled with as high a degree of confidentiality as is practicable, particularly when the issue is of a sensitive nature. Any Manager, member of staff or their representative must ensure that they maintain the confidentiality of the process and of University documents; any breach of confidentiality may be treated by the University as a disciplinary matter and appropriate action taken.

A copy of the formal record of any Hearing will be provided upon request to the relevant parties, although the University reserves the right to withhold certain information should it become necessary. No electronic recording of any part of the proceedings is permitted.

5. General Principles

- The overarching principle is that staff are supported in achieving the required standard of competence to undertake their duties and responsibilities. However, issues of capability can arise and this Policy seeks to ensure that any under-performance/capability matters should be brought to attention with a view to enable early intervention and resolution in a fair and consistent manner and within a reasonable timeframe. The prime objective is to improve an individual's performance to the required level and maintaining such standards.
- It is expected that issues would be raised with the member of staff informally as far as possible in the first instance in order to avoid the need for formal capability action. The Capability Procedure is designed to try to establish the facts quickly and to deal with capability issues consistently and fairly. A reasonable view will be applied to making an exception if matters have prevented an issue being raised in a timely manner.
- A lack of capability is when failings are identified and intervention is felt to be necessary. In some circumstances this may include where the existing skills and

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abilities of a staff member may no longer meet the requirements of the role or they have not been maintained.

- This Policy does not apply to disciplinary issues where a member of staff is able to perform the duties required of their role, but their conduct is unsatisfactory e.g. they refuse or will not perform their duties etc. Such issues should be dealt with under the Disciplinary Procedure. Further, where a member of staff has a certified, long-term medical condition, disability or an illness or injury that has the potential to be long-term from the outset (e.g. resulting from accidental injury or heart attack) that is impacting upon their work this should be dealt with under the Incapacity on Medical Grounds Policy. Advice should be sought from Human Resources.
- Line Managers have a responsibility to ensure that realistic and measurable standards of performance are set, for explaining these standards carefully to members of staff and for supporting staff, with the aim of meeting the standards set, in order to perform their role and responsibilities satisfactorily.
- All members of staff as part of regular reviews will have their job and expectations of performance explained to them as necessary. Appropriate training and support to become familiar with job requirements, can be given where needed. Staff must also be made aware of the standards expected of them and where expectations change and evolve over time, Managers have a responsibility to inform staff of these changes. This should form part of the normal day to day management process. All members of staff are expected, and have a responsibility to achieve and maintain acceptable standards of performance to undertake their duties and responsibilities.
- Staff members who are subject to Capability proceedings, are expected to engage fully with this procedure. Avoidance or refusal to engage/co-operate may be taken into account in any Capability process and/or in consideration of the stage of the process/level of the warning.
- Subject to the advice of Human Resources, the Capability Procedure may be initiated at any stage depending upon the seriousness of the alleged under-performance/capability. Reasonable notice will be given of any formal Capability Hearing.
- A staff member may be suspended on full pay at any stage of the Procedure should suspension be deemed necessary for reasons of Health and Safety, or essential to facilitate a Capability investigation. Suspension is not a Disciplinary/Capability sanction and must not be used as such. Suspension should always be for as short a time as possible and will be subject to appropriate review. Exceptionally, the University may consider alternatives to suspension, for example temporary redeployment, additional supervision or the restriction of duties. Any such alternative may only be considered on the authority of the Director of Human Resources, or nominee in their absence, as is deemed appropriate in the circumstances.
- A formal Capability Hearing will not be convened until a Management case has been prepared. At each stage of the formal procedure staff are entitled to be

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accompanied by a companion. When attending formal meetings and Hearings staff members should ensure that they inform the University of their choice of companion. All parties should try to avoid undue delays to the process and should take all reasonable steps to attend any meetings.

- At any stage of the process if a member of staff becomes ill, the normal reporting procedures and Sickness Absence Management processes will apply in parallel. The member of staff is expected to fully engage with any requirement to attend an Occupational health appointment and to engage with any recommendations from the resulting OH report.
- The University will take into account any mitigating circumstances when reaching decisions on appropriate Capability sanctions.
- A staff member subject to Capability proceedings will be informed in writing of any formal Capability decision that is reached.
- Only in exceptional circumstances will dismissal of a member of staff be considered without prior warning(s) and opportunity to improve performance having been provided.
- Any Capability sanction should be disregarded for Capability purposes after its specified period of application. Any decision to dismiss should not be based on an expired warning but the fact that there is an expired warning may explain why the University does not substitute a lesser sanction. There may be occasions where a member of staff's performance is satisfactory throughout the period the warning is in force, only to lapse thereafter. Where such a pattern emerges, the member of staff's Capability record may be borne in mind in deciding how long any subsequent warning should apply.
- If, during the course of a Capability process matters come to light that suggest that the issue could be addressed under an alternative Policy, advice should be sought from Human Resources. They will determine if, in the interest of reasonableness, the matter should proceed using an alternative Policy. If this occurs the process will start at the appropriate stage under the alternative Policy. It does not need to start at the beginning of such Policy.

6. Responsibility of those involved

Managers are responsible for:

- Ensuring employees understand what is expected of them, in terms of performance and acceptable standards
- Ensuring employees have a manageable workload
- Setting (SMART) objectives and targets, providing support, training and development where required for acceptable standards for performance

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- Giving honest and constructive feedback on performance through regular 1-2-1 meetings
- Monitoring performance via regular 1-2-1 supervision meetings and through the annual Performance Development Review process
- Addressing performance issues at the earliest opportunity. When discussing capability/under-performance, Managers must be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions
- Considering whether there are issues outside of work that impact on the employee's ability to undertake work to a satisfactory standard i.e. health issues or family circumstances

All Managers with a responsibility for the management of staff will need to be aware of the requirements of this Policy and related Policies and should ensure that their direct reports are familiar with its contents. The raising of Manager's awareness of the requirements of this Policy will be achieved through training and dissemination of the Policy.

Employees are responsible for:

- Understanding that they have a responsibility to achieve and maintain appropriate standards and ensuring their work performance meets the requirements of their role and targets set and that such performance is maintained
- Engaging fully with University Procedures when dealing with issues relating to their own performance and completing their Performance Improvement Plan or agreed actions
- Keeping their professional knowledge up to date and identifying where training or development needs may be required
- Advising their Line Manager at the earliest opportunity of any issues, in or out of work that may affect their performance.

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7. Managing Capability/Underperformance – The Procedure

The Informal Procedure

Whilst the vast majority of staff will meet or exceed the standards required of them, capability/performance problems can and do arise. Matters in the first instance, should be addressed and if possible resolved at the informal stage. Line Managers/ Supervisors/Team Leaders should raise concerns about capability/underperformance at the earliest opportunity and in a timely manner, so that informal resolution can be attempted. Under this Procedure, capability/underperformance should be handled promptly and sensitively and all parties should act in good faith to seek a successful resolution within a reasonable time frame. Any necessary disclosure of information will be discussed and agreed with the relevant parties.

If there are concerns about an employee's performance, the Line Manager should meet with the employee to explain their concerns. They should make it clear that they are addressing the individual's performance gaps 'informally' within the Capability Procedure. Where appropriate, when there is evidence that an individual is not performing at an acceptable level, steps will be taken to try to resolve issues on an informal basis. The Line Manager/Supervisor/Team Leader should investigate the circumstances without delay and endeavour to ascertain the reasons for the unsatisfactory performance. In all cases, consideration will be given to providing training and support to help the individual to meet the standards required.

At this meeting the Line Manager/Supervisor/Team Leader will seek to establish:

- 1. Clarification** of the required standards - ensure that the staff member is aware of the level of capability/performance/productivity required in relation to each element of the duties about which there is a concern.
- 2. Identification** of the areas of concern - make clear the areas in which the individual's capability/performance is below expectations, explaining the grounds and evidence for this view and how they could be resolved.
- 3. Give** the opportunity to the member of staff to explain their underperformance - allow staff to raise any concerns they may have about the job, or the support, training and/or guidance they feel they may require to do it.
- 4. Identification** of the possible causes of poor performance - identify the problems or reasons for the underperformance, which could be resolved. If the capability/performance issues are due to domestic, personal or work related problems, the employee should explain this to their Line Manager. These situations should be dealt with sensitively.
- 5. Bear** in mind the provisions of the Equality Act 2010 - in particular, the obligation to make reasonable adjustments when dealing with disabled members of staff (see Brunel University London Policy on Equality and Diversity in Employment).

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6. Clarification of any **actions** to be taken - solutions to the problem could include additional training, retraining, providing a mentor, job shadowing, coaching or some other kind of support to the individual.

7. Confirm a **time table** for improvement, against agreed objectives - set and agree reasonable time frames within which improvement is expected and arrange regular meetings during this time to review the situation. When establishing “reasonable timescales” for improvement, Managers must consider the complexity of the tasks involved e.g. in relation to the training required, qualifications and experience of the individual. (See appendix F for an example of a Performance Improvement Plan - PIP).

When discussing capability/underperformance Managers must be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions. The member of staff is expected to fully engage in all stages of the Informal process.

The content and outcome of this initial meeting, will be confirmed by the Line Manager/Supervisor/Team Leader in writing to the individual, including the type of improvement required, any additional support or training that will be provided, any other agreed actions and the timescale for improvement and review. This must clearly state that this is the Informal Stage of the Capability Procedure and that it is hoped that the actions will lead to a satisfactory outcome being achieved and maintained, in which case the matter will have been resolved. However, it should outline what the next stage of the Procedure could be, if the performance does not improve.

There is no right to be accompanied by a companion at this stage. However in exceptional circumstances a companion may be allowed to attend the meeting as an observer.

The Formal Capability Procedure

The formal Capability Procedure will be followed where the Informal process has not led to the required level of improvement within the timescales agreed or improvement has not been sustained, despite appropriate support, or where the capability / underperformance is considered to be too serious for an informal approach to be adequate.

Advice must be sought from a Human Resources representative if a Manager decides that there are grounds to initiate the formal Capability Procedure. A Management case will be required.

Right to be accompanied

Staff members have the right to be accompanied by a companion at any formal Capability Hearing (see Definitions and Expectations of Role).

Non-attendance at Capability Hearing

Members of staff are expected to make themselves available for meetings/Hearings at the date and time as specified in their invitation letter and to fully engage in the process.

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If there are good reasons why they are unable to attend they must inform the University in advance where possible e.g.

- The chosen companion will not be available at the time; the Hearing may be delayed to a time when the representative/companion is available, provided that the alternative time is both reasonable and normally not more than 5 working days after the date originally proposed. Where the Panel is unable to convene for this proposed date, an alternative proposal will be made but all parties should try to avoid unnecessary delay.
- As a result of exceptional circumstances that are outside of their control and which were unforeseeable at the time the meeting was arranged, the University will arrange another meeting, again without unnecessary delay where possible.

However, if the employee is unable to attend the reconvened meeting, refuses to attend, or the University does not accept the reasons given for not attending, it may proceed in their absence, taking into account the information available. In certain circumstances it could also result in the disciplinary procedure being followed. Staff may, in extenuating circumstances, supply the Panel with a written statement but it should be noted that this is not a recommended option nor would it provide the opportunity for the individual to respond appropriately e.g. to questions raised within the Hearing.

In all instances a reasonableness test will be applied when considering how best to proceed.

Stage One - Formal Capability Hearing

If there is continued unsatisfactory performance, or where a first instance of unsatisfactory performance is sufficiently serious to warrant formal action (e.g. where health and safety is at risk or significant costs or other liabilities are involved), the member of staff will be invited to a formal Hearing. This will be done in writing by Human Resources and will set out the issues to be considered including details of the Management case to be discussed and all relevant documentation, and advise that they will be given the opportunity to respond. (See appendix D for the Management case format). The letter will advise the staff member of their right to be accompanied and of the need for confidentiality. The letter will also advise of the outcomes that could result from the hearing and advise that a first written warning would only follow if the matter was found against the member of staff and/or there was sufficient cause for concern.

The Hearing will normally take place within 10 working days from the date of the letter and will request the staff member to provide any supporting documentation and/or witness statements at least 5 working days prior to the Hearing. Witnesses may be called as determined by the Panel.

Should it be considered that it is a Disciplinary or Ill health issue rather than one of Capability/under performance, the matter may be referred for consideration under the appropriate Policy.

A Stage One Capability Panel will comprise of a minimum of three members: the Line Manager/Head of Department, an Independent Manager of equivalent level or more senior level (if appropriate), and a Human Resources representative, although the

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composition may be varied depending on the nature and complexity of the issue concerned.

At the Hearing, the Presenting Manager will present the Management case. The member of staff will be reminded of the earlier informal discussions (where these have happened) and the steps taken to support an improvement in their performance. The member of staff/companion may ask questions of the Presenting Manager together with the Panel members. The member of staff will then be given the opportunity to state their case and respond and to raise any factors that s/he wishes to be considered in any mitigation. Both parties will then be invited to provide a concluding summary statement.

Short adjournments will be possible during the hearing for instance to confer with a representative/companion. (See Appendix B for suggested Hearing format).

Stage One – Formal Hearing – Outcome

As soon as possible after the Hearing, the Panel will consider the case and decide whether or not they wish to uphold the case and/or there is sufficient cause for concern, and determine what sanction or recommendations should be applied. At Stage One, a first formal written warning may be issued. It may be necessary for the Panel to seek further information/ clarification following the Hearing, and such action will impact on the timeliness of the outcome being determined.

If a first written warning is to be issued, the Chair of the Panel (or nominee) will issue the staff member with a **first formal written warning**, normally within 5 working days of the Hearing/Panel decision.

The letter will provide the staff member with details of:

- The findings of the Panel, including the details of any warning issued
- The improvement expected and the expected timeframe with any review periods as appropriate
- The support, training, guidance or other agreed actions that may be required
- The consequences of failing to respond to the warning or failing to sustain the required improvement
- The right to appeal and to whom it should be submitted in writing by them within 10 working days of the date of the letter containing the decision

The written warning will remain live for 12 months from the date of issue. If the staff member is absent for any reason for a period of more than one month during the 12 month period then the warning will be extended by an equivalent length of time.

If the Capability case is dismissed or alternative action is recommended, the Chair of the Panel (or nominee) will write to the member of staff concerned, normally within 5 working days of the Hearing/Panel decision, confirming this, including any alternative action that may have been recommended by the Panel.

If witnesses have provided a statement but have not attended the Hearing, they will be informed, normally by their interviewer, that the matter has been heard.

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Stage Two - Formal Capability Hearing

Where following a Stage One Capability Hearing, there has been insufficient improvement in capability/performance within the timescale following the first written warning; where the staff member has failed to achieve or sustain the improvement(s) expected from a warning issued at Stage One, or the matter is deemed serious enough to warrant direct referral; a Manager may consider referring the matter to Stage Two of the Capability Procedure. In such circumstances the Manager must refer to Human Resources department for advice. The staff member will be invited in writing to a Stage Two Capability Hearing. This will be done in writing by Human Resources and will set out the issues to be considered including details of the Management case to be discussed and all relevant documentation, and advise that they will be given the opportunity to respond. (See appendix D for the Management case format). The letter will advise the staff member of their right to be accompanied and of the need for confidentiality. The letter will also advise of the outcomes that could result from the Hearing and advise that a final written warning would only follow if the matter was found against the member of staff and/or there was sufficient cause for concern.

The Hearing will normally take place within 10 working days from the date of the letter and will request the staff member to provide any supporting documentation and/or witness statements at least 5 working days prior to the Hearing. Witnesses may be called as determined by the Panel.

The Panel will comprise of a minimum of three members: a Senior Independent Manager from the Department/College (or other appropriate Senior Manager), another Senior Member of staff / the Line Manager/Head of Department, and a representative from Human Resources, although the composition may be varied depending on the nature and complexity of the issue concerned.

At the Stage Two hearing, the Presenting Manager will present the Management case. The member of staff will be reminded of the formal written warning in place (if applicable) and the steps taken to support an improvement in their performance or the reason why the matter warranted a direct referral. The member of staff/companion may ask questions of the Presenting Manager together with the Panel members. The member of staff will then be given the opportunity to state their case and respond and to raise any factors that s/he wishes to be considered in any mitigation. Both parties will then be invited to provide a concluding summary statement. (See appendix B for the suggested Hearing procedure format).

Either party may seek a short adjournment during the Hearing for instance to speak with their companion.

Stage Two – Formal Hearing – Outcome

As soon as possible after the Hearing, the Panel will consider the case and decide whether or not they wish to uphold the case and/or there is sufficient cause for concern and determine what sanction or recommendations should be applied. At Stage Two, a final formal written warning may be issued. It may be necessary for the Panel to seek further information/ clarification following the Hearing, and such action will impact on the timeliness of the outcome being determined.

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If a final written warning is to be issued, the Chair of the Panel (or nominee) will issue the staff member with a **final written warning**, normally within 5 working days of the hearing/Panel decision.

The letter will provide the staff member with details of:

- The findings of the Panel, including the details of any warning issued
- The improvement expected and the expected timeframe with any review periods as appropriate
- The support, training, guidance or other agreed actions that may be required
- The consequences of failing to respond to the warning or failing to sustain the required improvement
- The right to appeal and to whom it should be submitted in writing by them within 10 working days of the date of the letter containing the decision

The Panel may consider it more appropriate that a Stage One formal written warning is given, or the previous warning extended, which will be made clear in the outcome letter.

The final written warning will remain live for 24 months from the date of issue. If the staff member is absent for any reason for a period of more than one month during the 24 month period then the warning will be extended by an equivalent length of time.

If the Capability case is dismissed/not upheld or alternative action is recommended, the Chair of the Panel (or nominee) will write to the member of staff concerned, normally within 5 working days of the Hearing/Panel decision, confirming this, including any alternative action that may have been recommended by the Panel.

If witnesses have provided statements but have not attended the Hearing, they will be informed, normally by their interviewer, that the matter has been heard.

Stage Three - Final Capability Hearing

Where following a Stage Two Capability Hearing, there has been insufficient improvement in capability/performance within the timescale following the final written warning; where the staff member has failed to achieve or sustain the improvement(s) expected from a warning issued at Stage Two, or the matter is deemed serious enough to warrant direct referral, a Manager may consider referring the matter to Stage Three of the Capability Procedure. In such circumstances the Manager must refer to the Human Resources department for advice. The staff member will be invited in writing to a Stage Three Final Capability Hearing. This will be done in writing by Human Resources and will set out the issues to be considered including details of the Management case to be discussed and all relevant documentation, and advise that they will be given the opportunity to respond. (See appendix D for the Management case format). The letter will advise the staff member of their right to be accompanied and of the need for confidentiality. The letter will also advise of the outcomes that could result from the hearing and advise that an outcome could result in their dismissal, if the matter was found against the member of staff and/or there was sufficient cause for concern.

The Hearing will normally take place within 10 working days from the date of the letter and will request the staff member to provide any supporting documentation and/or

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witness statements at least 5 working days prior to the Hearing. Witnesses may be called as determined by the Panel.

The Final Capability Hearing Panel will comprise of a minimum of three members: an Independent Senior Manager, another Senior Member of staff/the Line Manager/Head of Department, and a representative from Human Resources, although the composition may be varied depending on the nature and complexity of the issue concerned.

At a Stage Three Final Capability Hearing, the Presenting Manager will present the Management case. The member of staff will be reminded of the formal written warning in place (if applicable) and the steps taken to support an improvement in their performance or the reason why the matter warranted a direct referral. The staff member will be given the opportunity to respond and to state their case and raise any factors that s/he wishes to be considered. (See Appendix B for suggested Hearing format).

Either party may seek a short adjournment during the Hearing for instance to speak with their companion.

Stage Three - Final Hearing - Outcome

As soon as possible after the Hearing, the Panel will consider the case and decide whether or not they wish to uphold the case and/or there is sufficient cause for concern and determine what sanction or recommendations should be applied. At Stage Three, a dismissal could result. It may be necessary for the Panel to seek further information/clarification following the Hearing, and such action will impact on the timeliness of the outcome being determined.

The Chair of the Panel (or nominee) will issue the staff member with a written outcome, normally within 5 working days of the Hearing/Panel decision.

On the basis of the information presented the Panel may decide upon one or more of the following outcomes:

- To dismiss the staff member on grounds of capability (with appropriate notice/pay in lieu of notice)
- That there are insufficient grounds to dismiss the staff member and that a final written warning; or extension of an existing warning would be more appropriate; with continued support, training and regular reviews as appropriate
- No formal warning is issued
- Other action may be recommended
- To remove any title or office held in addition to the substantive post
- To withhold an increment of salary
- In exceptional circumstances action short of dismissal may be taken, for example to demote the member of staff to another post within the University if appropriate, with a reduced salary.

The above list is not exhaustive and the outcome may be varied according to the circumstances of the case.

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If the case is dismissed/not upheld, the Chair of the Panel (or nominee) will write to the member of staff concerned, normally within 5 working days of the Hearing/Panel decision, confirming this, including any alternative action that may have been recommended by the Panel.

In the event that the Panel decision at the Hearing is to dismiss the staff member, the letter will inform the staff member of the reasons for their dismissal, their period of notice/pay in lieu of notice (if applicable), the date on which their Contract of Employment with the University will be terminated and the right to appeal the decision and to whom it should be submitted in writing by them within 10 working days of the date of the letter containing the decision being appealed.

If witnesses have provided a statement but have not attended the Hearing, they will be informed, normally by their interviewer, that the matter has been heard.

8. Right of Appeal

There is no right of appeal against the outcome of the Informal procedure of this Policy.

An individual has the right to appeal against any outcome of a formal stage of this Procedure, including any Capability sanction against them. Appeals must be lodged in writing to the Director of Human Resources/nominated Human Resources Manager, within ten working days of the date of the letter containing the decision, clearly stating the grounds for their appeal. In exceptional circumstances where the outcome letter can only be delivered through the external postal system, a longer deadline of 15 working days may be applied.

An Appeal Hearing is not usually a re-hearing of the case. The Appellant must be specific about the grounds of appeal as this will form the agenda for the Appeal Hearing. The Appeal Panel should normally confine discussions to the specific grounds of appeal rather than reconsider the whole matter afresh. The documentary evidence from the original Hearing will be available for reference purposes however and the Chair of the original Hearing (or nominated Panel member) will be responsible for presenting the rationale for their Panel's decision, if requested, whether in person or by correspondence.

Grounds for Appeal may be raised on the basis of:

- Procedural irregularity which has a material effect on the decision
- Disregard of material evidence
- The severity of the sanction in the face of the evidence presented
- Demonstrable bias or prejudice on the part of the Panel
- New evidence – which has genuinely come to light since the Hearing. Where new evidence is raised, further investigations may need to be carried out which may require the Appeal Hearing to be postponed, pending the outcome of the investigations.

An Appeal Hearing will be arranged as soon as possible, allowing for factors such as Panel member availability. The Appeal will be heard by two senior Managers who have not previously been involved in the case and a Human Resources representative. The

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Panel where possible, should reflect a varied profile in terms of ethnicity, gender and disability wherever possible. (see Appendix C for suggested Hearing process).

The individual will have the right to be accompanied by a companion and should make the necessary arrangements to enable their companion to attend.

For Academic Staff (as defined in Statute 1 – 1.1), where a dismissal outcome has been decided, an Appeal Panel shall be constituted as specified under that Statute, and will consist of at least three members, including a Chair being a member of Council not being a person employed by the University; at least one other member of Council not being a person employed by the University and at least one member of the academic staff nominated by the Senate.

Possible outcomes of an Appeal Hearing may be for the Appeals Panel to:

- Confirm the decision of the previous hearing
- Uphold the Appeal and rescind the decision; in which circumstances the Appeals Panel may consider it appropriate to recommend an alternative, lesser sanction; or dismiss the Capability case entirely.

The above list is not exhaustive and the outcome may be varied according to the circumstances of the case.

The outcome of the Appeal will be set out in a letter from the Chair of the Panel (or nominee) to the Appellant who will be advised that the decision is final and that there is no further right of appeal.

9. Other circumstances affecting capability or performance at work

An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance record. Managers must bear in mind the provisions of the Equality Act 2010, in particular the obligation to make reasonable adjustments when dealing with disabled members of staff (See Brunel University London Policy on Equality and Diversity in Employment). The Equality and Diversity Manager should be consulted in this instance.

The procedure for managing long-term periods of sickness absence (four weeks or more) is set out in full in the Sickness Absence Management Policy. The early stages for managing repeated short-term absence is also set out in the Sickness Absence Management Policy. If the cause of poor performance may be connected to ill health, then the Occupational Health service will be consulted and the appropriate Procedure will be followed, with the necessary adjustments made where reasonably possible. The staff member is expected to attend medical appointments as required.

10. Staff members who are an accredited trade union representative

Where capability action is being considered against a staff member who is an accredited trade union officer/ representative of a trade union recognised by the University, no formal capability action will be initiated until the University has made reasonable efforts to discuss the matter (with the prior agreement of the staff member) with a regional

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official of that trade union. This does not prevent the University from suspending the staff member in line with this policy.

If the trade union officer/representative concerned objects to the regional officer being contacted, the University will continue with the capability process.

11. Special Circumstances and further information

Overlapping Grievance and Capability Cases

Where a grievance is raised when the capability process is already underway or vice versa, consideration will be given as to whether it is appropriate to deal with both issues concurrently. The same Panel would be used. Only in exceptional circumstances will a Capability Procedure be adjourned to consider the grievance.

Staff member being charged or convicted with a criminal offence

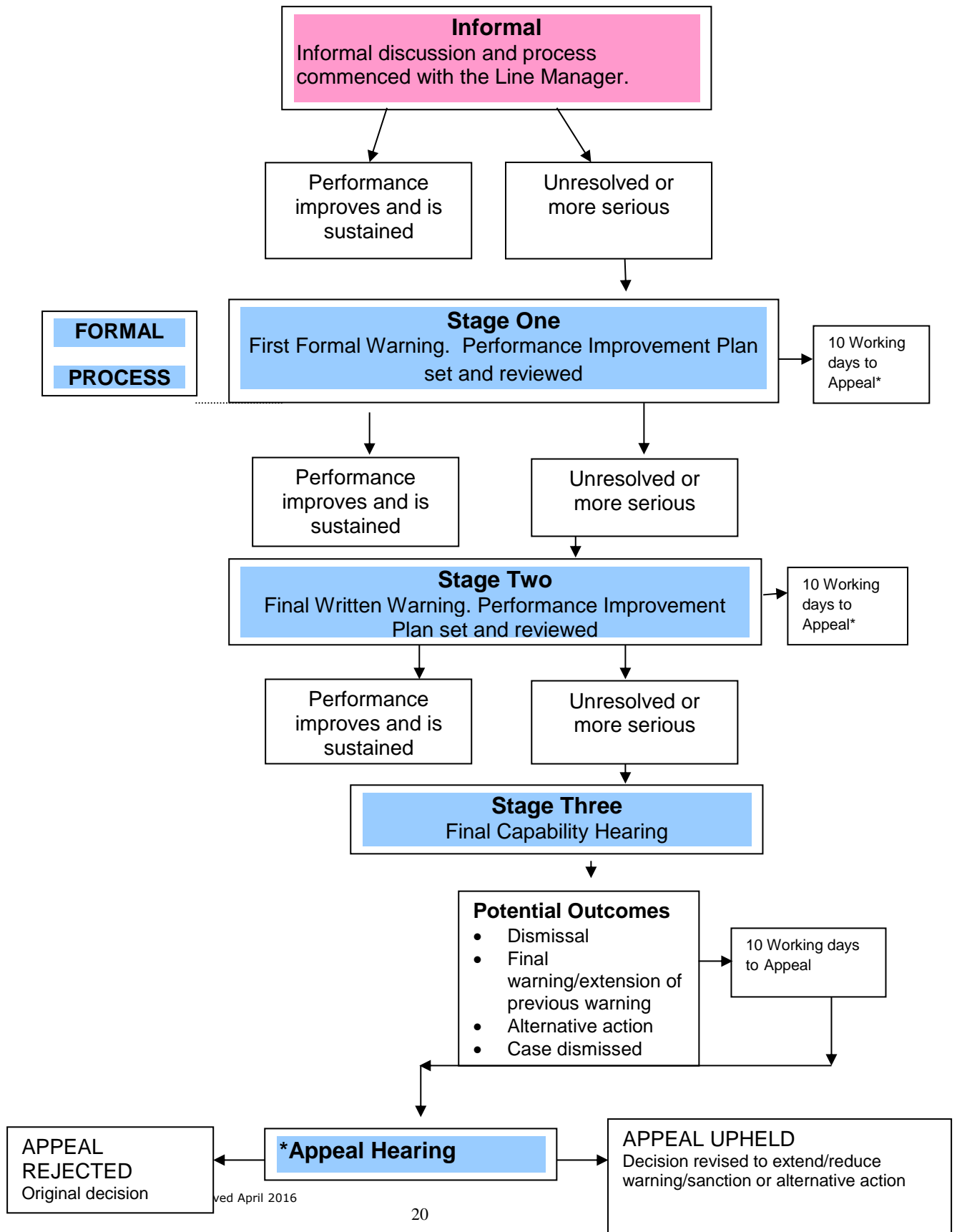
A staff member being charged or convicted with a criminal offence is not in itself a reason for taking capability action. Consideration will be given as to whether the offence or alleged offence is one that makes the member of staff unsuitable for their type of work or has a serious impact on their relationship with other members of staff or students or could impact on the reputation of the University. The University will establish the facts of the case and consider whether the facts warrant commencing the Capability Procedure/taking appropriate action.

Counselling

Staff may wish to consider utilising the University's Counselling service which offers emotional, psychological and mental health support. Counsellors are trained to listen, understand and to help clarify and address problems that may be interfering with the wellbeing and enjoyment of life for staff. This service is free and totally confidential.

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Appendix A – Capability Process Flowchart



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Appendix B – Suggested Capability Hearing Process

Only the Panel and if applicable, the note taker should be present in any pre-meeting. The Presenting Manager presenting the case together with the member of staff and their companion (Trade Union representative or work colleague) should not enter the meeting room until the Panel asks them in at the time of the actual Hearing.

The following is a guide for the Chair of the Panel to use in managing the Hearing process.

The Chair should:

1. Introduce all parties present and their role
2. Establish if witnesses have been called and confirm timings
3. Ensure that all parties are aware of the background to and the purpose and conduct of the hearing, e.g. the allegations to be heard, the Capability Stage and the format to be followed. Chair to confirm confidentiality and that breaks will be provided if requested
4. Confirm that all documents relevant to the Hearing have been received. In the event that a party wishes a document to be tabled, agreement by all parties will be sought
5. Advise what the possible outcome could be e.g. the issue of a written warning.

Either party may wish to provide witness statements in advance of the Panel Hearing and it is the responsibility of each party to ensure that their witnesses are available to attend the Hearing should that be necessary. It is the decision of the Panel, however, as to whether or not to call a witness to attend the formal Hearing.

Witness statements should be concerned with the facts relating to the issue and not consist solely of unsubstantiated opinion. If a witness provides a statement who is unable to attend a Hearing, or declines to attend, it will be up to the Panel members' discretion as to whether or not to accept the statement. The Panel may decide, however, that witness statements alone will be sufficient.

Suggested order of Hearing:

The Presenting Manager will present the Management case and offer potential resolutions if appropriate and call witnesses where required.

The member of staff or their trade union representative will have the opportunity to state their case, call witnesses where appropriate and to offer a resolution.

Both the member of staff and the Presenting Manager, together with Panel members, will have the opportunity to question the parties and their witnesses.

Both parties will then have the opportunity to sum up their case with a concluding statement, including how they believe the matter could be resolved, with the member of staff presenting their statement last.

The Chairperson may at any time during the Hearing decide to adjourn in order to seek clarification of any evidence presented, or to request further information. The aim is to

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achieve a clear understanding of the capability issues, why they have arisen and how they may be resolved.

Chair to adjourn Hearing and advise that the outcome will be delivered in writing as soon as possible.

Should any new evidence come to light during the adjournment, this will be disclosed either through paper submission or at a reconvened Hearing. This will provide all parties with visibility of the new evidence and the opportunity to respond.

If witnesses have been approached as part of the Management case, they will be provided with a brief statement once the Hearing has taken place, in order to inform them that the matter has been heard.

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Appendix C - Suggested Capability Appeal Hearing Process

Only the Panel and if applicable the note taker should be present in any pre-meeting. The Appellant and their representative, together with the Chair from the previous Hearing, if invited to attend, should not enter the meeting room until the Panel asks them in at the time of the actual Hearing.

The following is a guide for the Chair of the Panel to use in managing the Hearing process.

The Chair should:

Introduce all parties present and their role

Advise that the meeting is being held to consider the specific grounds stated in the Appeal statement.

Emphasise that confidentiality must be followed and that breaks will be provided if required.

Advise that the decision of the Appeal Panel is final and that there is no further right of appeal.

The order of the hearing should be:

The Appellant or their representative will be asked to put forward their case

The Panel will ask questions of the appellant

The Panel will ask questions of the previous Chair if their presence is required

The Chair will confirm that no further information is being put forward

The previous Chair to sum up if present

The Appellant or their representative will sum up

The Chair will adjourn the Hearing for the Panel to deliberate on the information presented which may include further investigation as necessary

The decision shall be advised in writing to all parties, normally within 5 working days of the Hearing unless a different timeframe has been advised.

The decision of the Appeal Panel shall be final. There is no further right of appeal.

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Appendix D – Management Case

The purpose of the Management case is to present the facts and to establish and gather evidence to aid informed decisions. This should be carried out in a timely and objective manner, in confidence.

Depending on the circumstances of the allegations, it may not be necessary for a prior meeting to be held for that purpose in order for a Management case to be prepared. If a member of staff does not engage in the process however or attend meetings, the Management case will be prepared based on the information available at that time.

The report should include:

- A description of the department in which the staff member's role sits and its reporting structure
- A description of the role/duties and how it fits into the department
- A detailed description of the capability/performance issues together with appropriate evidence
- Evidence of the steps and actions that have been taken to try to address the performance issues
- A detailed description of the impact that capability/performance issues has on the business area (e.g. on students, service levels, other staff etc.)
- A list of alternative options that have been considered
- Recommended action

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Appendix E - Methods of Improving Capability/Performance

There are many tools employees and their Managers can make use of to help prevent poor performance, and aid performance improvement. Some of these are listed below, and should be considered by both parties when deciding how capability/performance improvement can be supported:

- On the job training/re-training, either provided by a suitably qualified/experienced colleague, external agency, or self-managed
- Arranging for coaching / mentoring to take place
- Temporary work shadowing to develop specific skills or knowledge, or to gain an insight into other ways of working
- Providing additional equipment / resources to enable the employee to perform their role more effectively, taking into account what provision is reasonable
- Providing closer supervision and guidance to employee in a structured way.
- Identifying and providing access to training courses or professional development activities, including formal training or qualifications, which will help employees learn or further develop specific skills. These could be related to technical skills, or more general skills, i.e. customer service or leadership and management
- Appropriate adjustments to workload; however, care should be taken by Managers to ensure that any adjustments to workload do not considerably impact on another employee's wellbeing or on service delivery
- Considering a referral to the Occupational Health service or Staff Counselling Service where health or personal issues may be affecting performance
- Agreeing the use of a Performance Improvement Plan – PIP (see Appendix F)

This is not an exhaustive list.

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Appendix F Performance Improvement Plan (PIP)

The Performance Improvement Plan – (PIP) is designed to facilitate constructive discussion between the staff member and Manager, to clarify work performance to be improved. Once the plan has been developed, the document is reviewed by the Manager to determine if the activities outlined will help the employee to attain the desired level of performance. The Manager will monitor and provide feedback to the employee regarding the progress of their performance management.

The Manager should review the following six items with the employee when using the document.

1. State performance to be improved (*be specific and cite examples*).
2. State the level of work performance expectation and note that it must be performed on a consistent basis.
3. Specify the support/resources you will provide to assist the employee.
4. Communicate your plan for providing feedback to the employee (meetings, with whom and how often).
5. Specify possible consequences if performance standards are not met.
6. Provide sources of additional information

QUESTIONS? *Your Human Resources Business Partners are available to answer questions and to provide assistance to you regarding the use of the Performance Improvement Plan (PIP).*

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Example (do not fill in this part)

Performance to be improved	In agreement with the Line Manager who will list the activities to be initiated to improve performance - including skills to be improved and changes made to meet work performance expectations. <i>(List short and long term goals to be accomplished as applicable.)</i>	Targeted date for improvement – by when?	Expected results	Dates reviewed by employee and supervisor

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Organizational Skills	<p>Update the student database on a daily basis. To reduce errors and improve accuracy within defined ratios.</p>	<p>Effective immediately</p>	<p>Database is accurate and up to date on a daily basis</p>	<p>3rd July 15</p>
	<p>Develop, plan and implement the project timeline to successfully launch the new orientation program.</p>	<p>15th July 2015</p>	<p>Effectively run orientation program within timescales</p>	<p>15th September 2015</p>
	<p>Evaluate the success of the program by using the program evaluation results and provide the results to the supervisor.</p>	<p>15th August 2015</p>	<p>Improved project management and self-management skills</p>	<p>15th October 2015</p>

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	<p>Prioritising my work by establishing schedules and deadlines without reminders from the supervisor.</p> <p>Adapt to changing work priorities without losing efficiency. Raising any problems with the Supervisor for discussion.</p>	<p>Effective Immediately</p> <p>Effective immediately</p>	<p>Improved meeting deadlines; proactively provides information to supervisor regarding work in progress</p> <p>Improved ability to handle unexpected change</p>	
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Performance Improvement Plan

Employee Name: _____

Department: _____

Employee/Signature: _____

Title: _____

Date: _____

Reviewer/Signature: _____

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Performance to be improved	In agreement with the Line Manager who will list the activities to be initiated to improve performance - including skills to be improved and changes made to meet work performance expectations. <i>(List short and long term goals to be accomplished as applicable.)</i>	Targeted date for improvement – by when?	Expected results	Dates reviewed by employee and Supervisor/Line Manager

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Performance to be improved	In agreement with the Line Manager who will list the activities to be initiated to improve performance - including skills to be improved and changes made to meet work performance expectations. <i>(List short and long term goals to be accomplished as applicable.)</i>	Targeted date for improvement – by when?	Expected results	Dates reviewed by employee and Supervisor/Line Manager

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