

CAPABILITY POLICY AND PROCEDURE

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Other relevant policies to refer to:	Disciplinary Policy and Procedure Equality, Diversity and Inclusion Policy Equality and Diversity Policy Grievance Policy Incapacity on Medical Grounds Policy Probationary Procedure (Professional Services and Research Employees) Probation Process (Academic Employees) Reasonable Adjustment Policy
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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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POLICY

1. Policy Statement

1.1. Definition of Capability

Capability is the ability to execute a specified course of action or to achieve a desired outcome. The power or ability to do something.

- 1.2. The University is committed to ensuring that fair and effective arrangements exist for dealing with capability matters and is compliant with relevant legislation and [ACAS Codes of Practice](#).

2. Aims

- 2.1. To provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary in a fair, supportive, and consistent way.

To effectively manage an employee's performance in undertaking their role so that it is a continuous activity and enables both the line manager and the employee to know how well the employee is performing in relation to the University's objectives/business needs

- 2.2. To enable accountability and responsibility from both the employee and the manager to support good performance.

3. Scope

- 3.1. 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 (see [Appendix F - Appeal Process](#)).

- 3.2. This Policy is intended to be used in situations where there are significant and sustained concerns that an employee may not be adequately performing the duties required of their role due to lack of knowledge, skill, and or ability, prior to any performance improvement plan (PIP) being put in place.

- 3.3. This policy and procedure do not apply to conduct matters, which should be managed in accordance with the University's [Disciplinary Policy and Procedure](#). In addition, matters relating to incapacity due to long term medical conditions should be dealt with under the [Incapacity on Medical Grounds Policy and Procedures](#).

- 3.4. This policy and procedure apply to employees at the University. It does not apply to agency workers or self-employed contractors.

- 3.5. Employees in Professional Services and Research roles have a 6 month probationary period, and any concerns regarding capability during this time should be addressed using the [Probationary Procedure for Professional Services and Research Employees](#).

- 3.6. Employees in Academic roles normally have a 2 year probationary period, and any concerns regarding capability during the probationary period should be addressed using the [Academic Probation Process \(Academic Employees\)](#).

4. Principles

- 4.1. This policy and procedure are in place to support employees who may not be adequately performing the duties of their role due to capability issues, and to seek solutions to enable continued employment. It is recognised that employee performance may be influenced by a number of factors; the University will offer reasonable assistance to all its employees to resolve performance concerns.
- 4.2. It is essential to understand that matters related to capability should not be perceived as assigning blame. We acknowledge that an employee's circumstances or external factors beyond their control may change over time, potentially affecting their ability to meet the role's expectations.
- 4.3. All capability issues must be handled with sensitivity and care, aiming to identify and when appropriate, address the underlying causes.
- 4.4. All Managers with a responsibility for the management of employees 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.
- 4.5. Training in the application of this policy and procedure will be provided to managers to enable them to effectively identify (at informal & formal stages) capability issues accurately.
- 4.6. All managers are required to meet with their employees on a regular basis, including undertaking 1-2-1's, to allow constructive 2-way conversation and feedback with their employees.
- 4.7. To ensure equitable treatment and, when appropriate, provide necessary support within the University's application of this procedure, employees are encouraged to share information about any relevant equality or diversity issues without resulting in any detrimental impact.
- 4.8. Employees with disabilities will be supported with reasonable adjustments (see [Reasonable Adjustment Policy](#)) as required, in discussion with them and if appropriate occupation health, so that they can fully participate in this procedure.
- 4.9. It is expected that managers will raise issues with the employee informally in the first instance to avoid the need for formal capability action.
- 4.10. Timescales that are set to support improvement in performance should consider the details of the individual case, including the nature and impact of the poor/underperformance due to capability issues being addressed. Timescales need to be agreed by the manager and the employee in consultation with Human Resources, and should be reasonable.
- 4.11. If concerns are raised all parties have a responsibility to respond in a timely manner, namely:
- Managers should raise concerns in a timely manner,
 - The employee should respond in a timely fashion (management should take into account where employees may not have access to computer systems or may require further support to raise matters),

- Human Resources should ensure that the process, once instigated, is managed in a timely manner.
- 4.12. Representatives of the Human Resources Department and/or Trade Unions can give advice and assistance to managers and employees.
- 4.13. An employee will have the right to be accompanied by a companion (trade union representative or workplace colleague) of their choice at all formal stages of the procedure. If the employee is accompanied by a workplace colleague, the companion should be somebody who does not have a conflict of interest and they must be willing and available to assist. The employee's companion can support them during the formal process stages, take notes of the proceedings for them, address the meeting/hearing, and confirm and sum up their case with the employee if required. They may not answer questions on their behalf and not prevent the employee from responding.
- 4.14. Any dismissal is considered as a last resort and no employee will be dismissed on the grounds of capability without reasonable grounds of each stage of this procedure.

5. Confidentiality

- 5.1. Employees will be provided with full details of the concerns relating to their poor/underperformance due to capability issues.
- 5.2. All matters will be handled with as much confidentiality as possible, particularly when the issue is sensitive.
- 5.3. Any breach of confidentiality may be treated by the University as a disciplinary matter and appropriate action may be taken.
- 5.3.1. The Manager, employee or their representative should:
- 5.3.1.a. be sensitive to the situation and apply confidentiality
 - 5.3.1.b. ensure that they maintain the confidentiality of the process and of University documents
 - 5.3.1.c. discuss and agreed with the relevant parties any necessary disclosure of information

5.4. Manager's Responsibility

- 5.4.1. It is the responsibility of managers to:
- 5.4.1.a. communicate regularly with their employees
 - 5.4.1.b. ensure that the expectations of employees are clear
 - 5.4.1.c. to meet with their employees at the earliest opportunity to allow any initial concerns relating to an individual's duties, responsibilities, and their performance to be addressed informally.
 - 5.4.1.d. provide support in order to resolve matters in an appropriate manner.
- 5.4.2. When discussing poor performance due to capability issues, managers must be specific about their concerns and must demonstrate evidence and/or give examples to support their assertions. Employees are entitled to know what is expected of them and are responsible for meeting with their manager to discuss any concerns about their work. It is expected that all employees will endeavor to meet the requirements of their role, and they are encouraged to identify any support they may need.

5.5. Employee's Responsibility

5.5.1. It is the responsibility of the employee to:

- 5.5.1.a. achieve and maintain appropriate standards, ensuring their work performance meets the requirements of their role and targets set, and that such performance is maintained. They should engage fully with these procedures when dealing with issues relating to their own performance and complete their Performance Improvement Plan or agreed actions (PIP)
- 5.5.1.b. keep their professional knowledge up to date and identify where training or development needs may be required. They should confidentially advise their manager at the earliest opportunity of any issues, in - or out-side of the workplace, that may affect their capability.

PROCEDURE

Managing Poor Performance due to Capability Issues – The Procedure

1. The Informal Procedure

- 1.1. When it seems to a manager (or head of department) that an employee's capability to perform the duties required is in question and it has not been resolved through day-to-day communication, they should explore whether there is a need to discuss the employee's capability. The manager shall provide the employee with factual examples of any poor performance due to capability issues alleged, and meet with the employee to give them an opportunity to respond.
- 1.2. Before convening a meeting under the informal stage of this procedure, a manager must review and establish the facts in line with this policy and procedure i.e. carry out necessary investigations of potential capability-related matters to establish the facts of the case, prior to seeking advice from the Human Resources Department. There is no right for the employee to be accompanied by a companion at this informal stage, however, in exceptional circumstances, a companion (for example a trade union representative or workplace colleague of their choice) may be allowed to attend the meeting as an observer.
- 1.3. The following steps should be taken by a manager in addressing concerns of poor performance due to capability issues:
 - (i) Ensure accurate records are kept of conversations held with the employee regarding their performance and capability
 - (ii) Provide factual evidence of the alleged poor performance due to capability issues, discuss this with the employee concerned, and explore potential causes (which may include lack of skills, inadequate training, lack of support, tools or other resources, ineffective communication);
 - (iii) Ensure the employee is aware of the standards expected of them and any shortfalls in relation to their job description and job remit
 - (iv) Give the employee an opportunity to respond;
 - (v) Discuss any relevant issues such as unrealistic workloads or expectations, and lack of clarity over workloads;
 - (vi) Confirm any identified support/supervision/training or informal means to assist or resolve any problem;
 - (vii) Agree a time period over which monitoring will take place, if necessary;
 - (viii) Prepare written notes of the meeting which should include any additional support and training that will be provided, and timescales for review, and share and review these with the employee concerned.
- 1.4. If an informal review period is deemed necessary, the manager should explain to the employee that if there is no improvement during that period, the formal stages of the Capability Procedure may be initiated providing the manager has undertaken the following:
 - 1.4.1.a. The manager must have attempted to manage poor performance due to capability issues informally before entering the formal Capability Procedure.
 - 1.4.1.b. Provide the employee with sufficient time to address the capability concerns
- 1.5. If the causes of poor performance due to capability issues appear to be health related, the manager should refer to the [Incapacity on Medical Grounds Policy and Procedures](#) and also seek advice from Human Resources, who will liaise with Occupational Health to obtain medical advice on the matter.

1.6. The manager should bear in mind the provisions of the Equality Act 2010 - in particular, the obligation to make reasonable adjustments (see [Reasonable Adjustment Policy](#)) and when dealing with disabled employees (see [Equality and Diversity Policy](#)).

1.7. Should an employee have concerns about the informal stages of this procedure, they can consult Human Resources and/or their Trade Union representatives.

2. The Formal Capability Procedure

2.1. Managers must consult with Human Resource at the earliest opportunity to obtain advice and support if they are considering proceeding to the formal stage of the Capability Procedure.

2.2. Formal Stage One - Capability Hearing

2.2.1. Invitation to Formal Stage One - Capability Hearing

2.2.1.a. Where no improvement is demonstrated during the informal stage of the procedure, the employee will be invited to a Formal Capability Hearing. A member of the Human Resources team will confirm the hearing in writing, giving at least 15 working days' notice of the hearing.

2.2.1.b. The notification to attend a formal hearing must include the following:

- (i) The date, time, location of the hearing and confirmation that it is to be held under Stage One of the Capability Procedure
- (ii) The identity of the person chairing the hearing who will be the Line Managers manager/Head of Department, an Independent Manager of equivalent level or more senior level (if appropriate), and a Human Resources representative, although the composition may be varied depending on the nature and complexity of the issue concerned
- (iii) The employee has a right to be accompanied by a companion, namely a trade union representative or workplace colleague. If accompanied by a companion, the companion can support them during the process stages, take notes of the proceedings for them, address the meeting/hearing and confirm and sum up their case with the employee if required. They may not answer questions on their behalf nor prevent the employee from responding
- (iv) Witnesses, if put forward by either management or the employee will be asked to provide/agree a statement that is concerned with the facts relating to the capability issues. They will also be allowed to be called to be questioned/seek more clarity or provide additional evidence.
- (v) A copy of the Capability Policy & Procedure; Any documentation or evidence, including witness statements, to be relied upon at the hearing
- (vi) Request for the employee to provide a response to the Management case 5 days prior to the hearing taking place. This should include any documentation or evidence, including witness statements, to be relied upon at the hearing.

2.2.1.c. When attending formal hearings, employees 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 hearings.

2.2.1.d. If the companion (trade union representative/workplace colleague) is not available or the employee unable to attend, the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date, unless discussed and agreed with Human Resources;

- 2.2.1.e. If the employee fails to attend the reconvened hearing without informing Human Resources in advance, the hearing may proceed in their absence, taking into account the information available.
- 2.2.1.f. If an employee chooses not to attend the hearing, they can instead choose to supply the Panel with a written statement. However, 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.
- 2.2.1.g. If the employee has witnesses and the employee requests them to attend, arrangements will be made for the witness to attend the hearing to answer any questions relating to their statement as well as be questioned by either party.

2.2.2. During the Hearing

- 2.2.2.a. The Chair of the Panel must ensure that all parties have sufficient opportunity to present their case.
- 2.2.2.b. At the hearing, the employee will be reminded of the earlier discussions and expected standards of performance. During the hearing, the Presenting manager will outline and identify the current nature of the employee's poor performance due to capability issues and what steps have been taken to support the employee in addressing them.
- 2.2.2.c. The employee/companion (trade union representative/workplace colleague) may ask questions of the Presenting Manager together with the Panel members. The employee/companion (trade union representative/workplace colleague) will then be given the opportunity to state their case and respond/ raise any factors that they wish to be considered. Both parties will then be invited to provide a concluding summary statement.
- 2.2.2.d. Short adjournments will be possible during the hearing, for instance to allow the employee to confer with their companion (trade union representative/workplace colleague). (See [Appendix B – Suggested Hearing Process](#)).
- 2.2.2.e. The Chair of the Panel will listen to all information provided and, based on the facts of the case presented, form a judgment regarding a suitable action or resolution, as agreed with the Hearing Panel.
- 2.2.2.f. Where a case goes to Appeal, the Chair of the original hearing will be responsible for presenting the rationale for the Panel's decision to the Appeal Hearing if requested, whether in person or by correspondences (see [Appendix C - Suggested Capability Appeal Hearing Process](#)).

2.2.3. Formal Stage One – Capability Hearing – Outcome

- 2.2.3.a. As soon as possible after the hearing, the Panel will consider the case and decide whether they wish to uphold the case and/or there is sufficient cause for concern and determine what sanction or recommendations should be applied.
- 2.2.3.b. 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.

- 2.2.3.c. Should it be considered that it is a Disciplinary or Ill Health issue rather than one of poor performance due to capability, the matter may be referred for consideration under the [Disciplinary Policy and Procedure](#) for disciplinary issues and the [Incapacity on Medical Grounds Policy and Procedures](#) for ill health issues.
- 2.2.3.d. If a first formal written warning is to be issued, the Chair of the Panel (or nominee) will issue the employee with a first formal written warning, normally within 5-10 working days of the Hearing/Panel decision.
- 2.2.3.e. The letter will provide the employee with details of why the hearing took place, who was in attendance as well as the following:
 - (i) The findings of the Panel, including the details of any warning issued
 - (ii) The improvement expected and the expected timeframe with any review periods as appropriate
 - (iii) The support, training, guidance or other agreed actions that may be required
 - (iv) The consequences of failing to respond to the warning or failing to sustain the required improvement
 - (v) The employee's right to appeal (see [Appendix F - Appeal Process](#)) within 10 working days of the date of the letter containing the decision, and the name of the Human Resources team who it should be sent to
- 2.2.3.f. Any formal written warning will remain live for 12 months from the date of issue. In exceptional circumstances this may be extended.
- 2.2.3.g. If the Formal Stage One - Capability Hearing outcome is not upheld, alternative action may be recommended which may include mediation. Should mediation not address the concerns the employee has the right to raise the matter under the grievance process (see [Grievance Policy](#)).
- 2.2.3.h. If witnesses have provided a statement but have not attended the hearing, they will be informed that the matter has been heard.

2.3. Formal Stage Two - Capability Hearing

2.3.1. A Formal Stage Two - Capability Hearing may be considered in the following circumstances:

- 2.3.1.a. If implementation of Formal Stage One recommendations does not lead to a satisfactory outcome. However, before progressing to a Formal Stage Two - Capability Hearing the manager must refer to Human Resources for advice.

2.3.2. Invitation to Formal Stage Two - Capability Hearing

- 2.3.2.a. Where no improvement is demonstrated during Formal Stage One of the procedure, the employee will be invited to a Formal Stage Two - Capability Hearing. A member of the Human Resources team will confirm the meeting in writing, giving at least 15 working days' notice of the hearing.
- 2.3.2.b. The notification to attend a hearing must include the following:
 - (i) The date, time, and location of the hearing, and confirmation that it is to be held under Stage Two of the Capability Procedure.

- (ii) The identity of the person chairing the hearing who will be the Line Managers manager/Head of Department, an Independent Manager of equivalent level or more senior level (if appropriate) and a Human Resources representative, although the composition may be varied depending on the nature and complexity of the issue concerned
 - (iii) The employee has a right to be accompanied by a companion, namely a trade union representative or workplace colleague. If accompanied by a companion, the companion can support them during the process stages, take notes of the proceedings for them, address the meeting/hearing. and confirm and sum up their case with the employee if required. They may not answer questions on their behalf nor prevent the employee from responding
 - (iv) Witnesses, if put forward by either management or the employee will be asked to provide/agree a statement that is concerned with the facts relating to the capability issues They will also be allowed to be called to be questioned/seek more clarity or provide additional evidence.
 - (v) A copy of the Capability Policy & Procedure; Any documentation or evidence, including witness statements, to be relied upon at the hearing
 - (vi) Request for the employee to provide a response to the Management case 5 days prior to the hearing taking place. This should include, any documentation or evidence, including witness statements, to be relied upon at the hearing.
- 2.3.2.c. When attending formal hearings, employees 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 hearings.
- 2.3.2.d. If the companion (trade union representative/workplace colleague) is not available or the employee unable to attend, the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date, unless discussed and agreed with Human Resource;
- 2.3.2.e. If the employee fails to attend the reconvened hearing without informing Human Resources in advance, the hearing may proceed in their absence taking into account the information available.
- 2.3.2.f. If an employee chooses not to attend the hearing, they can instead choose to supply the Panel with a written statement. However, 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.
- 2.3.2.g. If the employee has witnesses and the employee requests them to attend, arrangements will be made for the witness to attend the hearing to answer any questions relating to their statement as well as be questioned by either party.

2.3.3. During the Hearing

- 2.3.3.a. The Chair of the Panel must ensure that all parties have sufficient opportunity to present their case.
- 2.3.3.b. At the hearing the employee will be reminded of the earlier discussions and expected standards of performance. During the hearing, the Presenting manager will outline and identify the current nature of the employee's poor performance due to capability issues and what steps have been taken previously to support the employee in addressing them.

- 2.3.3.c. The employee/companion (trade union representative/workplace colleague) may ask questions of the Presenting Manager together with the Panel members. The employee/companion (trade union representative/workplace colleague) will then be given the opportunity to state their case and respond/ raise any factors that they wish to be considered. Both parties will then be invited to provide a concluding summary statement.
- 2.3.3.d. Short adjournments will be possible during the hearing, for instance to allow the employee to confer with a representative/companion. (See [Appendix B – Suggested Hearing Process](#)).
- 2.3.3.e. The Chair of the Panel will listen to all information provided and, based on the facts of the case presented, form a judgment regarding a suitable action or resolution, as agreed with the Hearing Panel.
- 2.3.3.f. Where a case goes to Appeal, the Chair of the original hearing will be responsible for presenting the rationale for the Panel's decision to the Appeal Hearing if requested, whether in person or by correspondences (see [Appendix C - Suggested Capability Appeal Hearing Process](#)).

2.3.4. Formal Stage Two – Capability Hearing – Outcome

- 2.3.4.a. As soon as possible after the hearing, the Panel will consider the case and decide whether they wish to uphold the case and/or there is sufficient cause for concern and determine what sanction or recommendations should be applied.
- 2.3.4.b. 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 as part of their deliberations, and such action will impact on the timeliness of the outcome being determined.
- 2.3.4.c. Should it be considered that it is a Disciplinary or Ill Health issue rather than one of poor performance due to capability, the matter may be referred for consideration under the [Disciplinary Policy and Procedure](#) for disciplinary issues and the [Incapacity on Medical Grounds Policy and Procedures](#) for ill health issues.
- 2.3.4.d. If a Final Formal Written Warning is to be issued, the Chair of the Panel (or nominee) will issue the employee with a **Final Formal Written Warning**, normally within 5-10 working days of the Hearing/Panel decision.
- 2.3.4.e. The letter will provide the employee with details of why the hearing took place, who was in attendance as well as the following:
 - (i) The findings of the Panel, including the details of any warning issued
 - (ii) The improvement expected and the expected timeframe with any review periods as appropriate
 - (iii) The support, training, guidance or other agreed actions that may be required
 - (iv) The consequences of failing to respond to the warning or failing to sustain the required improvement
 - (v) The employees right to appeal (see [Appendix F - Appeal Process](#)) within 10 working days of the date of the letter containing the decision and the name of the Human Resources team who it should be sent to.

- 2.3.4.f. Any written warning will remain live for 12 months from the date of issue. In exceptional circumstances this may be extended.
- 2.3.4.g. If the Formal Stage Two - Capability Hearing outcome is not upheld, alternative action may be recommended which may include mediation. Should mediation not address the concerns the employee has the right to raise the matter under the grievance process (see [Grievance Policy](#)).
- 2.3.4.h. If witnesses have provided a statement but have not attended the hearing, they will be informed that the matter has been heard.

2.4. Formal Stage Three - Final Capability Hearing

2.4.1. A Formal Stage Three - Capability Hearing may be considered in the following circumstances:

- 2.4.1.a. If implementation of Formal Stage Two recommendations does not lead to a satisfactory outcome. However before progressing to a Formal Stage Three - Capability Hearing the manager must refer to Human Resources for advice.

2.4.2. Invitation to Formal Stage Three – Final Capability Hearing

- 2.4.2.a. Where no improvement is demonstrated during Stage Two of the procedure , the employee will be invited to a Formal Stage Three - Capability Hearing. A member of the Human Resources team will confirm the meeting in writing, giving at least 15 working days' notice of the hearing.
- 2.4.2.b. The notification to attend a hearing must include the following:
 - (i) The date, time, location of the hearing and confirmation that it is to be held under Stage Three of the Capability Procedure
 - (ii) The identity of the person chairing the hearing who will be the Line Managers manager/Head of Department, an Independent Manager of equivalent level or more senior level (if appropriate) and a Human Resources representative, although the composition may be varied depending on the nature and complexity of the issue concerned
 - (iii) The employee has a right to be accompanied by a companion, namely a trade union representative or workplace colleague. If accompanied by a companion, the companion can support them during the process stages, take notes of the proceedings for them, address the meeting/hearing, and confirm and sum up their case with the employee if required They may not answer questions on their behalf nor prevent the employee from responding
 - (iv) Witnesses, if put forward by either management or the employee will be asked to provide/agree a statement that is concerned with the facts relating to the capability issues They will also be allowed to be called to be questioned/seek more clarity or provide additional evidence.
 - (v) A copy of the Capability Policy & Procedure; Any documentation or evidence, including witness statements, to be relied upon at the hearing
 - (vi) Request for the employee to provide a response to the Management case 5 days prior to the hearing taking place. This should include, any documentation or evidence, including witness statements, to be relied upon at the hearing.

- 2.4.2.c. When attending formal hearings, employees 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 hearings.
- 2.4.2.d. If the companion (trade union representative/workplace colleague) is not available or the employee unable to attend, the employee may offer an alternative time and date as long as it is reasonable and it is not more than five working days after the original date, unless discussed and agreed with Human Resources;
- 2.4.2.e. If the employee fails to attend the reconvened hearing without informing Human Resources in advance, the hearing may proceed in their absence taking into account the information available.
- 2.4.2.f. If an employee chooses not to attend the hearing, they can instead choose to supply the Panel with a written statement. However, 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.
- 2.4.2.g. If the employee has witnesses and the employee requests them to attend, arrangements will be made for the witness to attend the hearing to answer any questions relating to their statement as well as be questioned by either party.

2.4.3. During the Hearing

- 2.4.3.a. The Chair of the Panel must ensure that all parties have sufficient opportunity to present their case.
- 2.4.3.b. At the hearing the employee will be reminded of the earlier discussions and expected standards of performance. During the hearing, the Presenting manager will outline and identify the current nature of the employee's poor performance due to capability issues and what steps have been taken previously to support the employee in addressing them.
- 2.4.3.c. The employee/companion (trade union representative/workplace colleague) may ask questions of the Presenting Manager together with the Panel members. The employee/companion (trade union representative/workplace colleague) will then be given the opportunity to state their case and respond/ raise any factors that they wish to be considered. Both parties will then be invited to provide a concluding summary statement.
- 2.4.3.d. Short adjournments will be possible during the hearing, for instance to allow the employee to confer with a representative/companion. (See [Appendix B – Suggested Hearing Process](#)).
- 2.4.3.e. The Chair of the Panel will listen to all information provided and, based on the facts of the case presented, form a judgment regarding a suitable action or resolution, as agreed with the Hearing Panel.
- 2.4.3.f. Where a case goes to Appeal, the Chair of the original hearing will be responsible for presenting the rationale for the Panel's decision to the Appeal Hearing if requested, whether in person or by correspondences (see [Appendix C - Suggested Capability Appeal Hearing Process](#)).

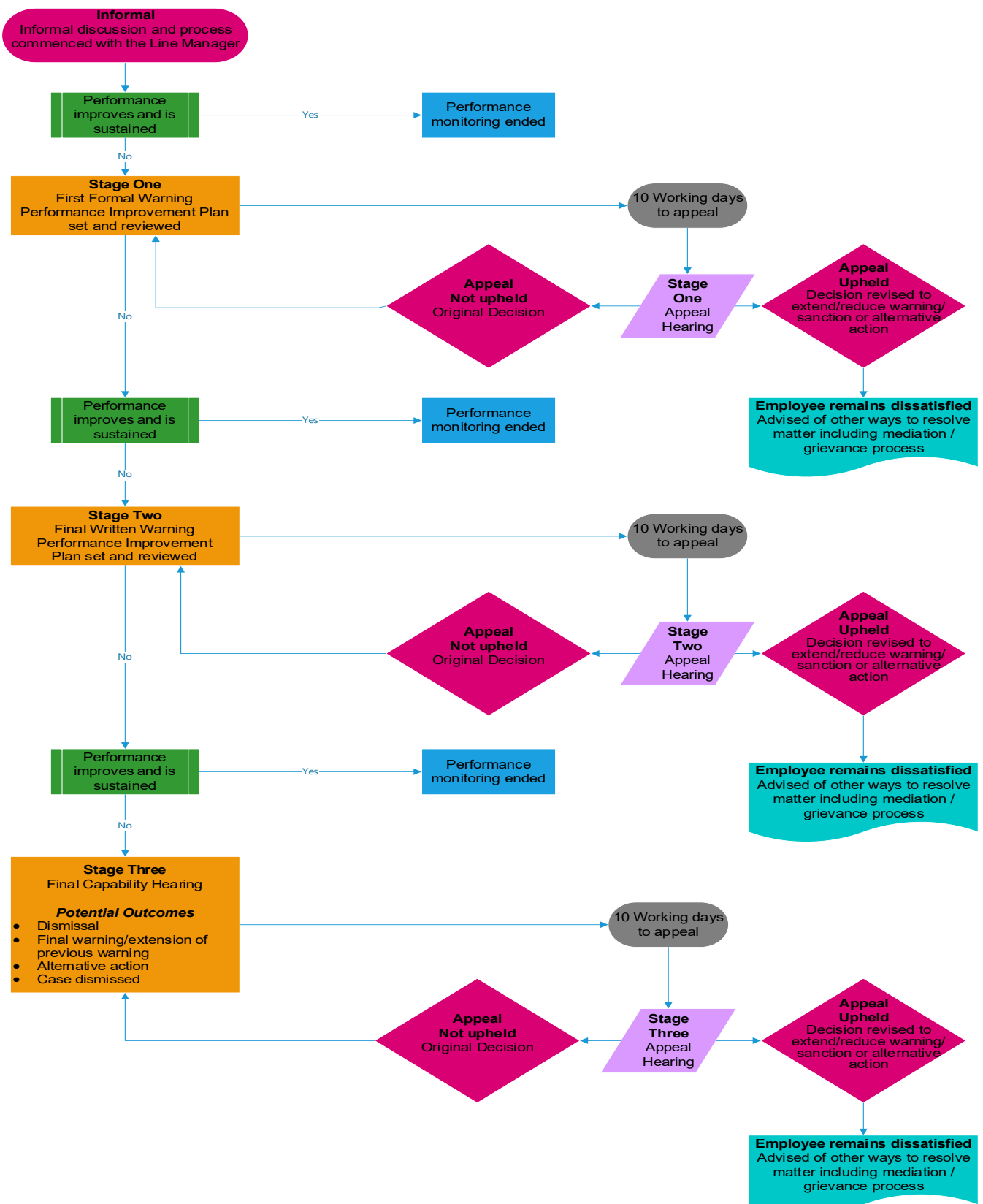
2.4.4. Formal Stage Three – Final Capability Hearing – Outcome

- 2.4.4.a. As soon as possible after the Hearing, the Panel will consider the case and decide whether they wish to uphold the case and/or there is sufficient cause for concern and determine what sanction or recommendations should be applied.
- 2.4.4.b. On the basis on the information presented the panel will determine upon one or more of the following outcomes:
- (i) No formal warning is issued
 - (ii) That it is a Disciplinary or Ill Health issue rather than one of poor performance due to capability. Should it be considered that it is a Disciplinary or Ill Health issue the matter may be referred for consideration under the [Disciplinary Policy and Procedure](#) for disciplinary issues and the [Incapacity on Medical Grounds Policy and Procedures](#) for ill health issues.
 - (iii) To dismiss the employee on grounds of capability (with appropriate notice/pay in lieu of notice)
 - (iv) That there are insufficient grounds to dismiss the employee and that a final written warning or an extension of an existing warning would be more appropriate with continued support, training and regular reviews as appropriate. Other actions may also be considered which may be more appropriate such as:
 - 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 employee to another post within the University, if appropriate and for a limited time if applicable, with a reduced salary.
- 2.4.4.c. The above list is not exhaustive and the outcome may vary according to the circumstances of the case.
- 2.4.4.d. If the Formal Stage Three - Capability case is not upheld, alternative action may be recommended which may include mediation. Should mediation not address the concerns the employee has the right to raise the matter under the grievance process (see [Grievance Policy](#)).
- 2.4.4.e. In the event that the Panel decision at the hearing is to dismiss the employee, the Chair of the Panel (or nominee) will issue the employee with a letter confirming that the employee's employment will be terminated due to capability, normally within 5-10 working days of the Hearing/Panel decision.
- 2.4.4.f. The letter will provide the employee with details of why the hearing took place, who was in attendance as well as the following:
- (i) reasons for their dismissal
 - (ii) their period of notice/pay in lieu of notice (if applicable)
 - (iii) the date on which their Contract of Employment with the University will be terminated
 - (iv) The employee's right to appeal (see [Appendix F - Appeal Process](#)) within 10 working days of the date of the letter containing the decision and the name of the Human Resources team member who it should be sent to
- 2.4.4.g. If witnesses have provided a statement but have not attended the hearing, they will be informed that the matter has been heard.

Capability Policy and Procedure

APPENDICES

Appendix A – Capability Process Flowchart



Appendix B – Suggested Formal Capability Hearing Process

1. Hearing – Pre Meeting

- 1.1. 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 employee 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.

2. Hearing – Chair's Role

- 2.1. The following is a guide for the Chair of the Panel to use in managing the Formal Hearing process. The Chair should:
 - 2.1.1.a. Introduce all parties present and their role.
 - 2.1.1.b. Establish if witnesses have been called and confirm timings.
 - 2.1.1.c. 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.
 - 2.1.1.d. Confirm that all documents relevant to the hearing have been received. In the event that a party wishes a document to be tabled,
 - 2.1.1.e. Advise what the possible outcome could be e.g. the issue of a written warning.
- 2.2. 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
- 2.3. 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 but 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.

3. Hearing - Order

- 3.1. Suggested order of Hearing:
 - 3.1.1.a. The Presenting Manager will present the Management case and offer potential resolutions if appropriate and call witnesses where required.
 - 3.1.1.b. The employee or their trade union representative will have the opportunity to state their case, call witnesses where appropriate and to offer a resolution.
 - 3.1.1.c. Both the employee and the Presenting Manager, together with Panel members, will have the opportunity to question the parties and their witnesses.
 - 3.1.1.d. 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 employee presenting their statement last.
 - 3.1.1.e. 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 achieve a clear understanding of the capability issues, why they have arisen, and how they may be resolved.

4. Hearing – Outcome

- 4.1. Chair to adjourn hearing and advise that the outcome will be delivered in writing as soon as possible.
- 4.2. 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.
- 4.3. If witnesses have been approached as part of the process, they will be provided with a brief statement once the hearing has taken place, to inform them that the matter has been heard.

Appendix C - Suggested Formal Capability Appeal Hearing Process

1. Appeal Hearing – Pre Meeting

- 1.1. 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.

2. Appeal Hearing – Chair's Role

- 2.1. The following is a guide for the Chair of the Panel to use in managing the Appeal Hearing process.
- 2.2. The Chair should:
 - 2.2.1.a. Introduce all parties present and their role.
 - 2.2.1.b. Advise that the Appeal Hearing is being held to consider the specific grounds stated in the Appeal statement.
 - 2.2.1.c. Emphasis that confidentiality must be followed and that breaks will be provided if required.
 - 2.2.1.d. Advise that the decision of the Appeal Panel is final and that there is no further right of appeal.

3. Appeal Hearing - Order

- 3.1. The order of the Appeal Hearing should be:
 - 3.1.1.a. The Appellant or their representative will be asked to put forward their case The Panel will ask questions of the appellant.
 - 3.1.1.b. 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.
 - 3.1.1.c. The previous Chair to sum up if present.
 - 3.1.1.d. The Appellant or their representative will sum up.

4. Appeal Hearing – Outcome

- 4.1. The Chair will adjourn the hearing for the Panel to deliberate on the information presented which may include further investigation as necessary.
- 4.2. 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.
- 4.3. The decision of the Appeal Panel shall be final. There is no further right of appeal.

Appendix D – Management Case

1. Purpose of the Management Case

- 1.1. 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, and in confidence.

2. Preparation of Management Case

- 2.1. Advice should be sought from HR prior to the preparation of the management case.. If an employee does not engage in the process however or attend meetings, the Management case will be prepared based on the information available at that time.

- 2.2. The report should include:

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

Appendix E - Methods of Improving Capability/Performance

1. Supportive Measures

- 1.1. 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.

2. Training/Equipment

- 2.1. On the job training/re-training, either provided by a suitably qualified/experienced colleague, external agency, or self-managed.
- 2.2. Arranging for coaching / mentoring to take place.
- 2.3. Temporary work shadowing to develop specific skills or knowledge, or to gain an insight into other ways of working.
- 2.4. Providing additional equipment / resources to enable the employee to perform their role more effectively, taking into account what provision is reasonable.
- 2.5. Providing closer supervision and guidance to the employee in a structured way.
- 2.6. 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.

3. Adjustments

- 3.1. Appropriate adjustments to workload; however, care should be taken by Managers to ensure that any adjustments to workload do not unreasonably impact on another employee's wellbeing or on service delivery (see [Reasonable Adjustment Policy](#)).

4. Wellbeing Services

- 4.1. Considering a referral to the Occupational Health service or the Employee Well Being Provider where health or personal issues may be affecting performance (see [Mental Health and Wellbeing](#)).

5. Performance Improvement Plan - PIP

- 5.1. Agreeing the use of a Performance Improvement Plan – PIP (see [Appendix H - Performance Improvement Plan - PIP](#)).

This is not an exhaustive list.

Appendix F - Appeal Process

1. Right of Appeal

- 1.1. There is no right of appeal against the outcome of the Informal procedure of this Policy.
- 1.2. 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 (or nominated member of Human Resources) 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.

2. Grounds for Appeal

- 2.1. 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.
- 2.2. 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.
- 2.3. Grounds for Appeal may be raised on one or more of the following:
 - (i) procedure – the procedure was not correctly followed and because of this there was a material failure which adversely affected the decision;
 - (ii) decision – the evidence did not support a finding of incapability;
 - (iii) proportionality - the decision was too harsh considering the nature of the incapability, previous or comparable cases, the mitigating circumstances, and/or the employee's previous service;
 - (iv) New evidence – the provision of evidence not available at the original hearing, which would have had a material impact on the decision.

3. The Appeal Hearing

- 3.1. An Appeal Hearing will normally take place 20 days after receipt of the appeal documentation allowing for factors such as Panel member availability.
- 3.2. Composition of the Appeal Hearing
 - 3.2.1. For Non Academic Employees
 - 3.2.1.a. The Appeal will be heard by two senior Managers who have not previously been involved in the case and a Human Resources representative.

3.2.2. For Academic Employees (as defined in Statute 1 – 1.1)

- 3.2.2.a. 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 employee nominated by the Senate.

4. **Right to be Accompanied**

- 4.1. The individual will have the right to be accompanied by a companion (trade union representative or work colleague) and should make the necessary arrangements to enable their companion to attend.

5. **Possible Outcomes of an Appeal Hearing**

5.1. Possible outcomes of an Appeal Hearing:

- (i) Confirm the decision of the previous Hearing.
- (ii) 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.

- 5.2. The above list is not exhaustive, and the outcome may vary according to the circumstances of the case.

- 5.3. 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.

Appendix G - Other circumstances affecting capability or performance at work

1. Health Condition affecting capability or performance at work

- 1.1. 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 employees (see [Reasonable Adjustment Policy](#), [Equality and Diversity Policy](#) and the [Equality, Diversity and Inclusion Policy](#) for further information).
- 1.2. 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 and Procedure](#). The early stages for managing repeated short-term absence are also set out in the [Sickness Absence Management Policy and Procedure](#). 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 employee is expected to attend medical appointments as required.

2. Employees who are an accredited trade union representative

- 2.1. Where capability action is being considered against an employee 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 employee) with a regional official of that trade union. This does not prevent the University from suspending the employee in line with this policy.
- 2.2. If the trade union officer/representative concerned objects to the regional officer being contacted, the University will continue with the capability process.

3. Special Circumstances and further information Overlapping Grievance and Capability Cases

- 3.1. 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.

4. Employee being charged or convicted with a criminal offence

- 4.1. An employee 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 employee unsuitable for their type of work, has a serious impact on their relationship with other employee 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.

5. Counselling

- 5.1. An employee may wish to consider utilising the University's Employee Assistance Programme (see [Mental health and wellbeing](#)) 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 the employee. This service is free and completely confidential.

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Appendix H - Performance Improvement Plan (PIP)

The Performance Improvement Plan – (PIP) is designed to facilitate constructive discussion between the employee 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 expected level of work performance and note that it must be reached 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).*

Capability Policy and Procedure

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

Capability Policy and Procedure

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

Capability Policy and Procedure

	<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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Capability Policy and Procedure

Performance Improvement Plan

Employee **Name:** _____

Department: _____

Employee/Signature: _____

Title: _____

Date: _____

Reviewer/Signature: _____

Capability Policy and Procedure

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

Capability Policy and Procedure

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

Capability Policy and Procedure

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