

Capability Policy and Procedure

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1. Policy

- 1.1 The aim of this policy is to ensure that all staff are enabled to work and perform to the best of their abilities to meet the needs of the University.
- 1.2 Whilst the University recognises that the majority of its employees meet or exceed the requirements and expectations of their roles, performance issues may arise.
- 1.3 The purpose of the Capability Policy is to provide a framework for managing underperformance in a fair, supportive and consistent manner.

2. Scope of the Procedure

- 2.1 This procedure applies to all employees of St Mary's University under a contract of employment, except agency staff and staff during their probationary period.
- 2.2 Performance issues identified during an individual's probationary period should be dealt with under the [Probation Policy and Procedure](#).
- 2.3 This policy should not be used for managing cases of sickness absence or misconduct. For such cases reference should be made to the [Sickness Absence Policy](#) or the [Disciplinary Policy and Procedure](#).

3. Principles

- 3.1 Capability refers to an employee's ability to perform the work expected of them to the required standard, taking account of the employees skills, ability, aptitude and knowledge.
- 3.2 The University has a responsibility for setting realistic standards of performance and for supporting employees to achieve the standards set.
- 3.3 Managers must be supportive of employees, help them to take action to improve their performance and consider any mitigating circumstances that may be affecting their performance.
- 3.4 The University seeks to ensure that performance matters are dealt with sensitively and with due respect for the privacy of those involved. All those involved must treat any information shared with them under this procedure as confidential.
- 3.5 All managers have a responsibility to ensure the fair application of this policy and procedure.
- 3.6 This policy does not form part of an employee's contract of employment and the University may make amendments to the policy where it is considered appropriate.

4. Use of Other Procedures

- 4.1 If after commencing action under this policy, the manager in consultation with their HR Business Partner/Advisor considers that the case would be better dealt with under an alternative procedure such as the Disciplinary Policy and Procedure, the case may be transferred to a different procedure.
- 4.2 Investigations that have been undertaken under one procedure, may be considered, as appropriate to inform action under another procedure.

5. Considerations for Disabilities

- 5.1 The University is aware that performance issues may sometimes arise from a disability or medical condition. Where appropriate, consideration will be given throughout the process as to whether there are reasonable adjustments that could be made to the employees working arrangements. This may require obtaining professional advice from the University Occupational Health provider.

- 5.2 If an employee considers they have a disability or medical condition which affects their ability to perform their role, they should inform their manager and/or HR.

6. Health Issues

- 6.1 In cases where it is determined that the underperformance of an employee is affected or caused by health issues, the line manager should consider referring the employee to the University Occupational Health provider for advice on possible adjustments to the employees working conditions or arrangements.
- 6.2 Particular care should be taken when health issues are involved and advice sought from relevant specialists as appropriate.

7. Informal Procedure

- 7.1 Managers should seek to resolve performance issues informally in the first instance and as early as possible as part of day to day management, one-to-one meetings and through the appraisal process.
- 7.2 Minor performance issues, or a single isolated incident of underperformance may be dealt with and quickly resolved through the processes outlined in 7.1. However, where this is not the case and performance is unsatisfactory, the manager should begin the informal stage of the Capability procedure.
- 7.3 The informal stage of the procedure is aimed at bringing concerns to the attention of the employee, exploring causes, identifying responsibilities and support required and agreeing actions to be taken.
- 7.4 Managers should be supportive of employees, considering their views and/or any mitigating circumstances that may be affecting their performance.
- 7.5 Informal meetings and discussions should:
- outline the nature of the concerns, providing specific examples as appropriate
 - set out the expected standards of performance
 - ask the employee for their own views and establish any causes of underperformance
 - identify any support required
 - identify actions required by the employee and manager to aid improvement
 - set timescales for improvement and review dates
 - explain the potential consequences of not achieving the required improvements in performance i.e. move to the formal stage of the capability procedure, which could lead to dismissal
- 7.6 A Performance Improvement Plan (PIP) may be used to record areas in need of improvement, actions required to aid improvement, support offered and timescales and review dates. The employee should be provided with a copy of this document.
- 7.7 Managers should ensure that appropriate support is put in place, this may include more regular supervision and/or formal training and coaching. The employee should also be provided with regular feedback on their performance and advised whether or not their performance has improved sufficiently to meet the required standard.
- 7.8 A monitoring period will be put in place. The length of the monitoring period should take into account peaks and troughs of work, but should not normally exceed 3 months.
- 7.9 If following the monitoring period, the employee's performance meets the required standard, no further action will be taken. Confirmation of the improved performance will be acknowledged to the employee in writing. The letter will also inform the employee that they must maintain this level of performance for at least 6 months, or action will resume under the formal procedure.

- 7.10 If as a result of the informal process the performance of the employee does not improve within a reasonable period, normally not less than 3 months, or the improvement is not sustained or deteriorates further, the manager should move to the formal stage of the procedure.

8. Formal Procedure

- 8.1 If performance does not meet acceptable standards, and informal action is not considered appropriate or has not succeeded in addressing the problem, the manager should consider whether there are grounds for taking formal action under this procedure.
- 8.2 If formal action is deemed appropriate the employee will be required to attend a capability meeting. A formal capability meeting will fall under one of the formal stages one to three, as outlined below.
- 8.3 In exceptional circumstances managers may shorten or move forward a stage in the procedure. For example:
- Where the employees underperformance presents an unacceptable risk to the safety or welfare of the employee or others
 - Where the employees underperformance presents an unacceptable financial risk to the University
 - Where the employee's underperformance presents an unacceptable reputational risk to the University

These examples are given for guidance only and are not exhaustive.

9. Conducting Formal Hearings

- 9.1 Where there are grounds for taking formal action regarding poor performance the employee will be required to attend a capability hearing.
- 9.2 The employee will be given at least 5 working days notice for stage one and two hearings and 10 working days notice for a stage three capability hearing. The invite will include details of the time, date and location of the capability hearing. The letter should also:
- Specify the nature and details of the unsatisfactory performance
 - Include a copy of any evidence to be considered at the hearing
 - Confirm that they may submit a written statement or other evidence
 - Confirm the employee's right to be accompanied at the hearing by a recognised trade union representative or work colleague
 - Inform the employee who will be present at the hearing
 - Outline the possible outcomes of the hearing, including dismissal at stage three
- 9.3 If the employee intends to submit a written statement or other supporting written evidence for consideration at the hearing, they may do this no later than 2 working days before the hearing.
- 9.4 The employee should confirm their attendance at the hearing and the name of their recognised trade union representative or work colleague, to the manager at least 2 days prior to the formal capability hearing. The employee will be responsible for arranging the attendance of their trade union representative or work colleague at the hearing.
- 9.5 Employees must make every effort to attend hearings under this procedure. If the employee or their chosen companion cannot attend a hearing, they must inform the

manager conducting the meeting as soon as possible. The manager will arrange an alternative date and time.

- 9.6 If the employee is unable to attend the rearranged hearing without good reason, the manager conducting the hearing may make a decision in their absence, based on the available evidence, including any written submission the employee has made.
- 9.7 The meeting will be conducted by the employee's line manager and will normally be attended by an HR representative. In the case of a stage three hearing, the meeting will be conducted by the manager's manager and attended by an HR representative. The manager who conducted the stage one and stage two meetings will also attend to present the management case. The Director of HR has the discretion to select panel members as necessary to support a fair decision-making process at all stages of the formal procedure.
- 9.8 A hearing may be adjourned if it is necessary to gather further information or to give further consideration to matters arising at the hearing.
- 9.9 The employee will be informed in writing of the outcome of the formal capability meeting, normally within 10 working days.

10. Formal Hearing Stages

- 10.1 Formal Stage One Hearing
- 10.2 If an employee's performance does not meet acceptable standards, and informal action is not considered appropriate or has not succeeded in addressing the performance problem, the employee may be required to attend a formal stage one hearing.
- 10.3 The employee will be invited to a formal meeting as set out in paragraph 9.2 above and will have the right to be accompanied by a recognised trade union representative or work colleague.
- 10.4 At the capability hearing the manager should:
 - Set out the required standards that it is considered the employee has failed to meet and consider any relevant evidence, including information from the informal stages of this procedure.
 - Give clear guidance on the improved standard of performance required and identify whether there are any further measures, such as additional training or supervision, which may improve performance.
 - Give the employee the opportunity to ask questions, present evidence, respond to evidence and make representations.
 - Establish the likely causes of underperformance, including any mitigating circumstances and/or reasons why measures taken so far have not led to the required improvement.
 - Discuss and agree targets for improvement and a timescale for review i.e. through a Performance Improvement Plan, ensuring a reasonable period of time is provided for the employee to demonstrate improved performance.
 - Warn the employee formally of the possible outcomes i.e. written warning
- 10.5 If as result of the hearing and the evidence presented, the employee's performance is considered to be satisfactory and no further action is required, this will be confirmed to the employee in writing.
- 10.6 If as a result of the hearing and the evidence presented the employee's performance is considered to be unsatisfactory, the manager will write to the employee issuing a first written warning. The warning will include details of:
 - the outcome of the hearing and sanction
 - the improvement in performance required

- the targets and timescales for improvement “the review period”
 - any support to be provided
 - the consequences of not meeting the performance targets within the review period
 - the employee’s right of appeal
- 10.7 The manager may consider withholding incremental progression for a specified period.
- 10.8 A copy of the warning will be retained on the employees file for a period of 6-12 months. The length of time that the warning will remain active will be determined by the manager in consultation with HR and will depend on the nature of the underperformance and the length of time during which an improvement can reasonably be expected.
- 10.9 A review period will be set, during which formal monitoring, evaluation, guidance and support will take place. The manager should hold regular meetings with the employee to review progress. A Performance Improvement Plan should be used to record actions taken and progress made during the review period.
- 10.10 The length of the review period will depend on the individual circumstances of the case, but should not normally exceed 3 months. An agreed review period may be shortened if it becomes clear that the employee is making no or minimal improvement or there is a marked deterioration in performance.
- 10.11 On completion of the review period, the manager will write to the employee confirming the outcome, which may be one of the following:
- The employee has met the performance standards set and no further action will be taken. The improved performance will be acknowledged and the employee informed that they must maintain this level of performance for the duration of their warning or action will resume under stage two of the capability procedure.
 - The employee has not met the performance standards set and the matter will be progressed to stage two of the capability procedure.
 - In exceptional circumstances the review period may be extended for up to a maximum of 4 weeks. This may be in circumstances where progress has been made, but the employee has not fully reached the required standard, or where there are mitigating reasons why the employee has been unable to meet the required standard of performance during the review period.
- 10.12 Formal Stage Two Hearing
- 10.13 If the employee’s performance does not improve following the formal review period under stage one, or there is further evidence of underperformance while the first written warning is still active the employee may be required to attend a formal stage two meeting.
- 10.14 The employee will be invited to a formal meeting as set as set out in paragraph 9.2 above and will have the right to be accompanied by a recognised trade union representative or work colleague.
- 10.15 The manager should conduct the meeting as outlined in 10.4.
- 10.16 If as a result of the meeting and the evidence presented, the employee’s performance is considered to be satisfactory and no further action is required, this will be confirmed to the employee in writing.
- 10.17 If as a result of the meeting and the evidence presented the employees performance is considered to be unsatisfactory, the manager will write to the employee issuing a final written warning. The warning will include details of:
- the outcome of the hearing and sanction
 - the improvement in performance required

- the targets and timescales for improvement “the review period”
 - any support to be provided
 - the consequences of not meeting the performance targets within the review period
 - the employee’s right of appeal
- 10.18 The manager may consider withholding incremental progression for a specified period.
- 10.19 A copy of the warning will be retained on the employees file for a period of 12 months.
- 10.20 A review period will be set, during which time formal monitoring, evaluation, guidance and support will take place. The manager should hold regular meetings with the employee to review progress. A Performance Improvement Plan should be used to record actions taken and progress made during the review period.
- 10.21 The length of the review period will depend on the individual circumstances of the case, but should not normally exceed 3 months. An agreed review period may be shortened if it becomes clear that the employee is making no or minimal improvement or there is a marked deterioration in performance.
- 10.22 On completion of the review period, the manager will write to the employee confirming the outcome, which may be one of the following:
- The employee has met the performance standards set and no further action will be taken. The improved performance will be acknowledged and the employee informed that they must maintain this level of performance for the duration of their warning or action will resume under stage three of the capability procedure.
 - The employee has not met the performance standards set and the matter will be progressed to stage three of the capability procedure.
 - In exceptional circumstances the review period may be extended for up to a maximum of 4 weeks. This may be in circumstances where progress has been made, but the employee has not fully reached the required standard, or where there are mitigating reasons why the employee has been unable to meet the required standard of performance during the review period.

11. Formal Stage Three – Capability Hearing

- 11.1 If the employee’s performance does not improve following the formal review period under stage two, or there is further evidence of underperformance while the final written warning is still active or the performance issues are sufficiently serious to warrant moving straight to formal stage three, the employee may be required to attend a formal stage three capability hearing.
- 11.2 The capability hearing will normally be conducted by the manager’s manager or in particular circumstances a staff member with equivalent standing to the manager’s manager. The manager who conducted the stage one and stage two meetings will attend the meeting to present the management case. An HR representative will also be present.
- 11.3 The employee will be invited to a formal stage three capability hearing as set out in paragraph 9.2 above and will have the right to be accompanied by a recognised trade union representative or work colleague.
- 11.4 At the hearing the chair will invite the manager who conducted the stage one and stage two meetings to present the management case. The manager should set out the specific concerns regarding the employee’s performance and any evidence to support this, referring as appropriate to previous capability meetings, targets set, support offered and degree of improvement or lack of improvement.

11.5 The employee will be given the opportunity to give their response and present their case.

12. Formal Stage Three Capability Hearing Outcomes

- 12.1 Having considered the management and the employee's case, along with the available evidence, the chair of the hearing may consider one or more of the following options:
- Take no further action if the employee's performance is considered to be satisfactory. Any warnings issued to the employee as part of the previous stages of the formal process will continue to apply.
 - To issue a first or final warning, where one is not already active.
 - To extend a final warning and set a further review period, where a substantial improvement is likely within the review period.
 - Other sanctions short of dismissal, including but not limited to:
 - Redeployment to a suitable available post within the University. Where a suitable post cannot be identified, or the employee does not accept the redeployment offer, the employee will be dismissed with notice.
 - Demotion
 - Unpaid Suspension
 - Restriction of duties/change to terms of employment
 - Transfer
 - Withholding/loss of incremental progression for a specified period
 - To dismiss on the grounds of capability
- 12.2 If some sanction short of dismissal is deemed appropriate the employee will receive written details, including any support which will be available. The letter will warn the employee that should there be further performance issues during a specified period, formal action will resume at stage three of the capability procedure.
- 12.3 In cases where the manager has shortened the formal stages of the procedure as outlined in 8.3, and moved straight to a formal stage three capability hearing. Should the employee be issued with a first written warning following the stage three capability hearing, and performance does not improve or deteriorates whilst the warning is still active, formal action will resume at stage two of the procedure. Where the employee is issued a final written warning following the stage three capability hearing, and performance does not improve or deteriorates whilst the warning is still active, formal action will resume at stage three of the procedure.
- 12.4 Any dismissal will be with full notice or payment in lieu of notice.
- 12.5 The employee will normally be informed of the outcome in writing within 10 days of the stage three capability hearing. The letter shall also notify the employee of their right to appeal against the decision and the sanction. In the event that the decision is taken to dismiss the employee, the letter will include the reasons for dismissal, the date their employment will end and their right of appeal.

13. Appeals Against Warnings and Dismissal

- 13.1 An employee who receives a warning or is dismissed under the capability procedure has the right of appeal. The appeal should set out in writing the grounds on which the employee believes the decision was flawed or unfair and sent to the Director of HR.
- 13.2 The employee should lodge their appeal within 5 working days of receiving written confirmation of the outcome of the meeting/hearing.

- 13.3 An appeal hearing will normally be convened within 10 working days of receipt of the appeal.
- 13.4 The appeal hearing will be chaired by a manager appointed by the Director of HR, who will be accompanied by an HR representative. The manager who made the decision which the employee is appealing may be required to attend the appeal meeting to present the management case, where this is deemed appropriate.
- 13.5 The employee will have the right to be accompanied at the meeting by a recognised trade union representative or work colleague.
- 13.6 At the appeal hearing the decision to issue the sanction will be reviewed and the employee will be given the opportunity to make representations about the appropriateness of the decision.
- 13.7 The outcome of the appeal will normally be confirmed to the employee in writing within 10 working days of the appeal hearing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

Relevant Policy Headings

[Disciplinary Policy and Procedure](#)

[Probation Policy and Procedure](#)

[Sickness Absence Policy and Procedure](#)

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Appendix 1 - Flowchart





