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## Capability Policy and Procedure

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### Introduction and scope of policy and procedure

1. This procedure is for all employees at all grades, including probationers.
2. This procedure is designed to deal with cases where you are lacking in some area of knowledge, skills, or ability and are unable to carry out your work duties to a satisfactory standard. It is to be used where there is a genuine lack of capability rather than a deliberate failure by you to perform to the standards to which you are capable. The disciplinary procedure should be used for cases in the latter category.
3. Your lack of capability may have been present for some time or may have arisen for a number of reasons. For example promotion, changes in job content or personal factors affecting your performance.
4. As an employer we are committed to assisting you to improve your performance, wherever possible. This procedure is the mechanism through which that help can be given in a fair and consistent manner where recourse to the disciplinary procedure is not applicable.
5. If your performance does not improve through this procedure it could result in dismissal or action short of dismissal.

### General principles

6. At all stages of the formal procedure you are entitled to have a representative present. The representative may be a co-worker or a trade union representative.
7. You and your representative will be made aware that the capability procedure and Performance Improvement Plan (PIP) is being followed (not the disciplinary procedure).
8. We will deal with performance issues as promptly as possible. To ensure this happens, we have set time limits in the formal procedures. If there is a delay to the smooth running of the procedure (for example, the unavailability of staff) we will discuss the delay and agree an extended timescale with you.
9. Should it become apparent to management that your under performance is due to poor conduct or lack of effort then the use of the capability procedure will stop and the process will switch to the disciplinary procedure. You will be informed of this change by Human Resources (HR) (under the disciplinary procedure) and the stage of the disciplinary procedure that is to apply.
10. Where absence from work is the primary reason for your under-performance management should refer to the Fair Absence Management Guidance.
11. Due consideration should be given to a disability or underlying health problem that

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might be contributing to your under-performance in keeping with the Equality and Diversity Policy.

12. A flowchart can be found at [Performance Improvement flowchart 2018](#) to illustrate how the procedure works.

## Manager and Employee Responsibilities

13. Your manager has a responsibility to:

- Set clear expectations about the standards of performance required of you, commensurate with your grade.
- Communicate with you regularly regarding your performance.
- Give honest, productive and prompt feedback.
- Offer ideas and opportunities to improve on your performance.
- Ensure that you have the resources and training required to perform in your role.
- Seek appropriate advice and support from HR before taking formal action under this procedure.

14. You have a responsibility to:

- Co-operate with and be receptive to dialogues with your manager about your performance.
- Recognise that different roles will require different levels of supervision from line managers. Depending on your role you may have a responsibility to take ownership for assessing your own work and identifying areas for improvement.
- Advise your manager if for any reason you do not feel you can meet the performance standards required of your role and asking for support.
- Engage in opportunities to improve and develop your own performance.

## Informal process

15. As part of your normal working relationship with your manager you may have discussions over errors, poor quality work and work that has been done well. This is consistent with effective management and our staff appraisal processes, to ensure that the objectives agreed within your forward job plan are being achieved. These discussions may lead on to informal assistance to help achieve improvement, as well as identifying any additional training requirements.
16. These informal approaches are not part of the formal capability procedure and therefore representation at meetings is not appropriate to this normal working relationship. Your line manager should record any issues raised, including any training and support provided to resolve these issues, in case the formal procedure is invoked. You are entitled to have a copy of these notes and any action points agreed.

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## Formal process

### Stage one

17. Where you are failing to perform to an acceptable standard despite having been given informal guidance and assistance, a meeting will be arranged. This will involve your line manager, a member of HR, you and your representative. HR will give you at least five working days' written notice of the meeting which should also include:
  - The procedure and stage being used.
  - Clear details of the shortfall in your performance.
  - All necessary supporting documentation.
  - Details of any informal action taken so far.
  - Your right to representation.
18. At this meeting you will be told of the gaps between your level of performance and that required for your role which have been identified, the improvement in work standard which is required and the possible range of outcomes of not doing so.
19. At the meeting you will have the opportunity to put forward your case, including explaining any difficulties you may be having. This will allow your line manager to establish the facts and to determine whether the Performance Improvement Plan (PIP) is the appropriate way forward.
20. If the PIP [Stage 1 PIP] is to be started the discussion should also cover any ways and means by which the necessary improvements may be achieved. Potential support methods include:
  - Training courses (external or internal).
  - Mentoring.
  - Working under close supervision from a line manager, or colleague who is competent and experienced at the work.
  - Agreed changes in duties, either permanently or for a trial period.
21. A realistic timescale for improvements must be set out. Depending upon individual circumstances this will vary, but would normally not be longer than three months. Your work performance will be monitored during the improvement period with you receiving constructive feedback.
22. HR will confirm to you in writing the outcomes from the stage one meeting within five working days of the meeting. You will also be given details of your rights of appeal.
23. At the end of the agreed improvement period, HR will convene a formal review meeting with your line manager to appraise you of the outcome of the performance monitoring. HR will confirm to you in writing the review outcome within five working days of the meeting.

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24. If your performance was found to be satisfactory at the end of stage one, that will be the end of the procedure, and you will no longer be under the PIP.

## Stage two

25. If your performance was still found to be unsatisfactory after the improvement period a further meeting will be held. This meeting will involve your line manager, a representative from HR, and you and your representative (if appointed). HR will write to inform you at least 10 working days in advance of the meeting and will provide:
- The performance monitoring undertaken.
  - Details of the shortfall in your performance.
  - All necessary supporting documentation.
  - Your right to representation.
26. Your performance and the measures that have been previously used should be reassessed. You will also have the right at this meeting to put forward your case, including any mitigating factors.
27. The meeting will need to decide whether you should remain in the PIP [Stage 2 PIP]. The meeting will also need to agree if the performance area in question is a fundamental part of your role. If so, the meeting should agree the support to be provided to facilitate your improvement, the timescale for such improvement (usually not more than three months) and the methods of monitoring your performance.
28. Depending upon the circumstances, improvement support may include:
- A continuation of your stage one support.
  - Any other method that may be of benefit.
  - The use of formal career counselling.
  - Adjustment of your duties.
  - Possible permanent redeployment.
29. In the case of promoted staff whose performance had been satisfactory at the lower grade, the option of reversion to the previous level of post (and terms and conditions of employment) may be considered. (In such cases HR will investigate the options available and then advise you and your manager.)
30. A formal warning on the grounds of performance may be issued at this stage. This will be either a first written warning (which remains in place for nine months) or final written warning (which lasts for twelve months) depending on how fundamental the performance area is to your role.
31. The primary purpose of the warning will be to clarify for you the possible outcomes if your performance does not improve.

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32. A warning may remain in place longer than the PIP. If your satisfactory performance is not maintained during the period of any warning given under the PIP you will revert back to the stage of the PIP at which the warning was issued.
  33. Within five working days of the review meeting, HR will confirm to you in writing your continued deficiencies, the expected improvement, the timescale for achieving it, details of the support that will be provided, the nature of any formal warning issued and the possible range of outcomes of not reaching the required standard. You will also be given details of your rights of appeal.
  34. At the end of the agreed improvement period, HR will convene a formal review meeting with your line manager to appraise you of the outcome of the performance monitoring. HR will confirm to you in writing the review outcome within five working days of the meeting.
  35. If your performance was found to be satisfactory at the end of stage two, that will be the end of the procedure, and you will no longer be under the PIP.

## Stage three

36. In the event that you do not achieve the required improvement at the end of stage two, HR will arrange a meeting between your Director (or another nominated manager), the Assistant Director of Human Resources (or their representative) and you and your representative (if appointed). HR will notify you at least 10 working days prior to this meeting.
37. At this meeting your repeated under-performance will be reviewed and you will have the opportunity to put forward your case and answer any questions. The Director (or another nominated manager, see above) will decide whether you are likely to achieve an acceptable level of performance. If so, an extension to the support available and the improvement period under stage two will be agreed [Stage 3 PIP].
38. If the performance gap is in a fundamental part of your role, the decision may be taken to terminate your employment on capability grounds or take action short of dismissal (e.g. demotion).
39. If no suitable alternative employment is available, or you do not wish to be redeployed, dismissal will take place. HR will confirm to you in writing the details of this decision, when it is effective, your right of appeal, to whom your appeal should be directed and any time limit for doing so, within five working days of the meeting.

## Appeal

40. You have a right of appeal at each formal stage of this procedure. Notwithstanding this right we will apply any management decisions without waiting for the outcome of the appeal process. In the event that your appeal is upheld we will retrospectively amend any management decisions which have been implemented without prejudice.
41. Your appeal will follow the appeal process detailed in the [disciplinary procedure](#). The

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decision of the appeal panel will be given in writing to you within five working days of the appeal hearing concluding.

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## Appendix 1: Guidance for Managers on Preparing a PIP

1. Read the Capability Policy and Procedure.
2. Take advice from Human Resources prior to and during the development of the PIP.
3. Involve the member of staff in discussion to develop the PIP and wherever possible reach agreement on the content of the PIP via a fair discussion about how achievable the goals are
4. Identify the minimum satisfactory level of performance required in the particular aspect of the job/role and compare this to the current capability of the member of staff.
5. Specify the overall performance improvement objective(s) to be achieved ensuring relevance to job/role. Where appropriate, separate out the constituent elements into detailed performance improvement objectives.
6. Consider the range of available approaches to enabling the required improvement; select the most appropriate method of development given budgetary and time constraints and the learning style of the member of staff.
7. Clarify practical matters such as required resources – e.g. time, money, equipment and which individuals/Directorate will be responsible for providing it, who will supervise the development process and assess its effectiveness and what timescale will apply and document this information.
8. Identify what will be the success criteria and how the learning/improved performance will be measured.
9. Ensure that the performance targets and development required are achievable. Where the member of staff has significant improvement needs, development against these should be undertaken in manageable steps.
10. Plan progress reviews on a regular basis as appropriate during the period of the PIP, identifying further action as required.
11. Identify further support for the member of staff during the course of the PIP as required.

Undertake a final review at the end of the PIP period and record outcome. Where a satisfactory performance level is attained and maintained confirm this by letter to the member of staff. Where the level of performance is not satisfactory identify further action required and confirm by letter to the member of staff.

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## Document history

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This Policy and Procedure is a contractual document. It is negotiated between Management and Unite collectively on behalf of staff.

Version number	Changes	Date approved
1.0	-	20/03/2018 Ratified by JNCF