# Capability Policy

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**Capability Policy**

# Introduction

## Cardiff Metropolitan University is a values driven University and expects employees to champion its values of Creativity, Diversity, Freedom and Innovation, and its behaviours of Leadership, Trust, Courage and Accountability.

## The University understands that its success depends on effective contributions from all of its employees and expects that employees will be competent in the skills, aptitudes and qualities necessary to carry out the job that they have been appointed to do.

## It is recognised that the majority of employees meet or exceed their responsibilities, however on occasion, performance concerns can arise and therefore it is important to ensure that appropriate support and encouragement is provided to help to achieve good performance and that there is a framework available to enable the management of underperformance.

## This policy and procedure is non contractual.

# Purpose

## This policy and procedure provides a framework for the prompt, effective, supportive and consistent handling of capability issues throughout the University that is reflective of its values and behaviours.

## This policy and procedure outlines the key principles and sets out guidelines for the management of underperformance.

# Scope

## This policy and procedure applies to all employees of the University unless they are within their probationary period. The University’s Articles of Government define the specific arrangements that apply only to the holders of senior posts (as defined in the Articles of Government). These are set out in the Procedure for Senior Post Holders.

## Where employees are within their probationary period, performance issues will be dealt with under the Probationary Policy and Procedure.

# Aims of the Policy

## This policy and procedure are designed with the primary objective of improving performance to the required level wherever possible where there are ongoing issues with an employee’s performance.

## The University aims to deal promptly, consistently and fairly in all matters in relation to capability and to be clear about the expectations of all parties.

## The University aims to ensure that employees perform to the highest standard to facilitate the best service and experience to students, stakeholders and wider University community.

## The University aims to ensure thatappropriate support is provided to enable underperforming employees to attain and sustain effective work performance.

# Principles

## This policy and procedure is designed to deal with issues fairly. There are a number of elements to this:

### Managers will seek to resolve performance issues informally and promptly.

### The University will not unreasonably delay meetings, decisions or confirmation of those decisions.

### The University and its employees will act reasonably, consistently and fairly in the application of this policy and procedure.

### This policy and procedure will not be invoked during any probationary period.

### Capability issues will be treated with sensitivity and everyone involved in this procedure will be treated with dignity and respect.

### There will be due respect for the privacy of everyone involved and where necessary, information will be shared confidentially, legitimately and in line with the principles of the Data Protection Act 2018 and the General Data Protection Regulation 2018.

### Managers will be provided with guidance and support to enable them to manage capability fairly and effectively.

### Employees will be made aware of expected standards of performance and will be provided with regular feedback from their managers.

### Employees will be informed of the basis of capability concerns promptly.

### Employees will be provided with appropriate and reasonable support, development and guidance in order to achieve and maintain the required standards of performance.

### Employees will be given reasonable time to address issues affecting their performance before any formal action is taken.

### Employees will be provided with an opportunity to state their case before any formal sanctions are applied in relation to this policy and procedure.

### Employees are entitled to be accompanied at any formal meetings in relation to this policy and procedure by a Trade Union Representative or a work employee.

### Employees are entitled to appeal against any formal decision made.

### Where written warnings under this policy have expired, they will be disregarded for the purposes of managing capability in the future.

# Key Roles and Responsibilities

## Managers are required to identify underperformance and seek to deal with it at the earliest possible opportunity. They must provide appropriate assistance, supervision and support to the employee to help them to reach the required standard.

## All employees are required to perform their duties to the expected standard and proactively seek to improve their performance where necessary, attending and actively contributing to meetings in relation to this policy when required to do so.

## The People Services Department will provide accurate and timely advice, guidance and support to managers on the application of this policy and procedure and monitor the application of this policy and procedure in order to ensure consistency across the University.

# Performance and Development Review Process

## The University operates a Performance and Development Review Process which is designed to facilitate structured discussions about performance and development, career conversations and to agree future objectives.

## Performance concerns should be dealt with promptly rather than being ‘saved up’ for the next scheduled Performance and Development Review meeting.

## Meetings under the Performance and Development Review Process will be paused during the formal stages of this policy.

# Suspension

## There may be exceptional circumstances where perceived incapability is considered serious enough to merit the suspension of an employee. This would normally only occur in circumstances where there is a danger to health and safety or the potential to seriously damage the University’s reputation.

## Suspension in these circumstances would be a neutral and precautionary act and will not constitute formal action in and of itself.

## Suspension would only be considered where all other options have been explored, will be as brief as possible, and will be kept under review.

## Where the alleged circumstances are deemed to be gross negligence, the matter will be referred to the University’s Disciplinary Policy and Procedure.

## The decision to suspend would normally be made by the Director of People Services in conjunction with the employee’s line manager. For holders of senior posts, the arrangements for suspension are described in the attached Addendum.

# Confidentiality

## The University's aim is to deal with performance matters sensitively and with due respect for the privacy of the individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure. Breaking confidentiality may result in disciplinary action being taken.

# Welsh Language Standards

## The University is fully committed to meeting the Welsh Language Standards and to ensuring that the Welsh language has equal status in its working practices in Wales and it welcomes correspondence in Welsh.

## For more information in relation to the Welsh Language Standards and the Capability Policy, please refer to the Capability Management Guidance or the Capability Staff Guidance.

# Data Protection

## All records in relation to the University’s Capability Policy and Procedure will be held confidentially and in accordance with the principles of the Data Protection Act 2018, the General Data Protection Regulation 2018 and the University’s Data Protection Policy.

# Deferment of Capability Management

## This policy will allow for the deferment of capability management in certain circumstances, including maternity leave, shared parental leave, adoption leave and career breaks.

## Any deferment should be discussed with People Services on a case by case basis.

## In these circumstances, the employee will receive written notice that the procedure has been deferred, and that it will normally be resumed at the same procedural stage upon their return to work.

## Where capability procedures have been deferred due to the reasons above, any current warnings may also be extended accordingly.

## Where a member of staff is absent from work due to sickness for a period of two weeks or more after the application of the formal stages of this policy, after discussion with the relevant People Services representative, the manager will make a referral to Occupational Health in order to determine whether the procedure should be deferred. Where this is the case, upon the employee’s return to work, the capability procedure will be resumed.

# Grievances Raised during the Capability Procedure

## If during the course of the Capability process the employee raises a grievance which is directly related to the Capability Policy and Procedure, or which calls into question the motivation of the manager who is progressing the case, then the process may be suspended in order to consider the concerns raised by the employee in accordance with the appropriate policy and procedure.

## If there is clear evidence that a grievance is vexatious, the employee raising the grievance may be subject to disciplinary action in accordance with the Disciplinary Policy and Procedure.

## Allegations of bullying and harassment may be raised as a response to a manager’s attempt to manage underperformance and/or capability. Bullying does not however include legitimate, justifiable and appropriately conducted actions to improve an employee’s job performance.

## The decision to suspend the Capability process, will be taken by the Dean of School, Director of Service or member of the Vice-Chancellor’s Group in conjunction with the relevant People Services representative, having considered all of the facts available.

## If the grievance is unrelated to the process then the Capability Procedure will continue.

# Recurring Underperformance

## Following successful completion of an improvement plan, a employee’s performance will be managed in the normal way, with regular one to one meetings and as a participant in the Performance and Development Review process.

## Should a employee’s performance once again fall short of expected standards, formal action will resume and should this happen while a warning is current, formal action will progress to the next stage in the procedure.

## In exceptional circumstances a final written warning may state that it will remain active indefinitely.

## If the warning is no longer current, the manager should re-start formal action at the First Formal stage of the procedure.

# Policy Revision

## The People Services Department will proactively advise, support, and monitor the application of this policy.

## To ensure it is relevant and effective, this policy will be reviewed every three years or where there is a change in the University’s requirements, employment legislation or case law.

# Addendum for Senior Post Holders

**Capability Procedure Addendum for the Management of Capability Matters affecting Senior Post Holders**

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**Capability Policy and Procedure**

**Addendum for the management of capability matters affecting holders of Senior Posts**

1. The University’s Capability Policy and Procedure provides a framework for the prompt, effective, supportive and consistent handling of capability issues throughout the University that is reflective of its values and behaviours. The University’s Articles of Government define the specific arrangements that apply only to holders of senior posts (as defined in the Articles of Government 1 (Interpretation) and Article 3 (1) (d) (i). This addendum describes these arrangements.
2. As far as possible, the provisions of the main capability procedure will apply to the management of concerns about the performance of holders of senior posts just as for other staff and the detailed procedural steps are not reproduced here.

**Suspension**

1. Paragraph 8.1 of the main policy defines the circumstances and procedure where perceived incapability is considered serious enough to merit the suspension of a employee.
2. In accordance with Article 10 (1) the Chair, or in the absence of the Chair, the Vice-Chair of the Board of Governors may suspend the holder of a senior post for misconduct or other good or urgent cause. The Chair or Vice-Chair shall report such suspension in writing to the Board of Governors within two working days, or as soon thereafter as practicable. Further provisions in relation to suspension of holders of senior posts, including the right of appeal may be found in paragraph 10 of the Articles of Government.

**Capability procedure**

1. For the purposes of this policy, the Chair, or in the absence of the Chair, the Vice-Chair, of the Board of Governors has responsibility for the Vice-Chancellor and of the Clerk to the Board of Governors. The Vice-Chancellor is the manager of the University Secretary and all other holders of senior posts. All the provisions of the Capability Procedure in relation to Informal Resolution (paragraph 2.1-2.6), Formal Stage One (paragraph 4.1-4.5) and Formal Stage Two (paragraph 5.1-5.5) apply to the holders of senior posts with support normally provided by the People Services representative as for other staff and managers.

**Appeals arising from stages one or two**

1. A holder of a senior post may appeal against a formal warning issued at either stage one or two of the capability procedure following the same procedure as other staff. Appeals, compliant with paragraphs 9.1 the main capability procedure, should be submitted to the Director of People Services.
2. The Chair will appoint either another lay member of the Board of Governors or an external expert to act as the Appeal Officer in relation to any appeals submitted at stages one or two (provided they have had no prior involvement with the matters under consideration) and their decision will be final.

**Capability Hearing**

1. Where there has been a failure to achieve or maintain the improvement required within the agreed timeframe the person responsible (Vice-Chancellor in relation to a holder of a senior post or Chair of the Board of Governors in relation to the Vice-Chancellor) should refer to the University Secretary and Clerk to the Board of Governors (or to the Director of People Services if the person subject to a capability process is the Clerk). As dismissal is a possible outcome of a Capability Hearing, the University Secretary and Clerk to the Board of Governors should convene a Special Committee (in accordance with Article 10 (5)) to examine the facts, otherwise investigate the grounds for dismissal, and to make a report to the Board of Governors.

**Appeal arising from stage three (Capability Hearing)**

1. The Chair, or in the absence of the Chair, the Vice-Chair of the Board of Governors should designate an external expert to act as the Appeal Officer. They will follow the Capability procedure (section 9).