



BISHOP GROSSETESTE UNIVERSITY

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BISHOP GROSSETESTE UNIVERSITY
CAPABILITY POLICY, PROCEDURE AND GUIDANCE

Responsibility for updating this document is with Human Resources.

The policy takes account of the ACAS Code of Practice which came into force on 6 April 2009. It is compatible with the Instrument and Articles of Government of the University effective from 1 April 2010 which are available from the Library and BGU website.

Manager responsible for policy	Head of HR
Forum for initial approval as delegated by the Governing Body	SLT
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Any records made during this procedure shall be kept in accordance with the Data Protection principles which are set out in the Data Protection Act 1998 and its subsequent revisions. The University and its staff or others who process or use personal information must ensure that they follow these principles at all times. A copy of the University Data Protection Policy is available on the BGU website.

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1. Purpose and scope

This policy applies to all staff at BGU who have successfully completed their probation period, and establishes arrangements for managers and staff in relation to under-performance. The policy is intended to ensure that cases of under-performance are dealt with fairly and equitably, with the prime objective of ensuring an individual's performance to the required level.

BGU has a responsibility for setting realistic and measurable standards of performance, for explaining these standards carefully to members of staff and supporting staff to achieve them. All members of staff have a responsibility to perform their duties to an acceptable standard and they should be given all reasonable support and encouragement to do so.

BGU recognises the difference between a deliberate failure on the part of the employee to perform to the standards of which he/she is capable and a case where an employee is lacking in knowledge, skill or ability or other extenuating circumstances and so cannot carry out his/her duties to the standard required, in which case the capability procedure will operate in an attempt to improve performance.

2. Capability

An under-performance/capability issue may arise when an employee is failing in a significant and persistent way to carry out their responsibilities or duties in a satisfactory manner. This may be due to a lack of professional insight, an inability to cope with reasonable workloads or not being able to meet identified standards. Alternatively it may be due to an inability to prioritise work, a lack of aptitude for the work itself, inadequate training or difficulty adapting to changes in the workplace. The procedure for dealing with under-performance is different from that to be used when dealing with misconduct. In cases of misconduct the disciplinary procedure should be used; this may include situations where the individual has proven they are capable of performing at the required level but has chosen not to do so.

The same standards apply to trade union representatives as to all other employees. However, where formal action is being considered against a trade union representative the case must be discussed with the full time official. This is to avoid the action being construed as an attack on the trade union and is consistent with ACAS Code of Practice.

3. Support

The procedure should be conducted in a positive and constructive way with the emphasis on developing plans to improve which are mutually agreed wherever practicable. When discussing under-performance managers must be specific about their concerns and demonstrate evidence/give examples to support their assertions. Areas of support may include the following in addition of off site training; observation by a suitably qualified person, sharing work with a colleague, and visiting others to observe good practice.

4. Timescales

As each case is different, it is not possible to set fixed timescales. However, as a general guide, the review period would not be less than four weeks and no more than four months. When establishing “reasonable timescales” for improvement, managers must consider the complexity of tasks involved in relation to the qualifications and experience of the individual and the place in the academic cycle.

5. Serious immediate issues

In exceptional cases where a performance error or defect has serious consequences (e.g. results in a risk to the health and safety of students or staff) this policy will not apply and instead the procedure for misconduct as outlined in the Disciplinary Policy will be followed.

6. Informal Stage

If it becomes clear that an individual is not performing at an acceptable level, the manager will investigate the circumstances without delay and seek to establish the reason for the unsatisfactory performance. If, following this initial examination, the manager considers that the individual’s performance is deficient in some material respect an informal discussion will be arranged.

The discussion should:

- make clear the areas where the individual’s performance is below expectations with the aim of identifying any problems or reasons for the under-performance which can be resolved
- identify solutions that may include additional training, guidance or support;
- agree a reasonable period to improve and undertake any training that is deemed necessary and arrange a further meeting to review the situation
- bear in mind the provisions of the Disability Discrimination Act, in particular the obligation to make reasonable adjustments when dealing with disabled members of staff.

The content and outcome of this meeting will be confirmed in writing by the manager including the type of improvement required, any additional support training that will be provided, any other agreed actions and the timescale for improvement and review.

7. Review

During the review period the manager may meet with the individual to provide feedback on progress and amend the plan where appropriate. Toward the end of the agreed time period if performance has reached the required standard a meeting should be arranged with the individual to confirm that outcome and agree how standards will be maintained. If it appears that performance remains unsatisfactory the individual should be invited to a formal meeting.

8. Formal Stage

Individuals should always be given notice of a formal review meeting and be given the right to be accompanied by a trade union representative or work colleague. Any documentation the manager or employee wish to consider should be provided in

advance wherever practicable to avoid delays at the meeting. Notes should be kept, copied to the individual and placed on the personal file.

At this formal meeting the manager will set out the performance problem, the steps that have been taken so far, the improvement that is required, what further training or support can be given and consideration of any extenuating circumstances that may be affecting the performance. A reasonable time period will be set within which improvement is expected and a further review date agreed. The individual will be advised that the meeting constitutes the first stage of the formal procedure and given the right of appeal. This will be confirmed in writing to the individual. A record of the meeting will be kept on the personal file.

9. Review

At the end of the review period the line manager will discuss the progress with the individual and inform them of the outcome of the review period. There will be three possible outcomes:

- the individual has now reached or is shortly expected to reach the specified levels of performance, and no further formal action is necessary, a record of this will be kept on the personal file in HR and if satisfactory improvement proves only to be temporary then the manager has the option of returning to this point in the procedure
- the individual has made substantial improvements but performance is still below acceptable standards. A further review period of one to three months will be agreed, or
- the individual has made little or no improvements or the improvement is not sustained and a further formal review meeting will be held.

10. Further Formal Stage

At this formal meeting the manager will set out the performance problem, the steps that have been taken so far, the improvement that is required, what further training or support can be given and consideration of any extenuating circumstances that may be affecting the performance. A reasonable time period will be set within which improvement is expected and a further review date agreed. The individual will be advised that the meeting constitutes the final stage of the formal procedure and given the right of appeal. This will be confirmed in writing to the individual. A record of the meeting will be kept on the personal file.

11. Review

At the end of the review period the line manager will discuss the progress with the individual and inform them of the outcome. There will be three possible outcomes:

- that the individual has now reached or is shortly expected to reach the specified levels of performance, and no further formal action is necessary, a record of this will be kept on the personal file in HR and if satisfactory improvement proves only to be temporary then the manager has the option of returning to this point in the procedure
- the individual has made substantial improvements but performance is still below acceptable standards. A further review period of one to three months will be agreed, or

- that the individual has made little or no improvements or the improvement is not sustained. In such circumstance a formal hearing will be arranged.

12. Formal Capability Hearing

Following notification from the manager, a capability hearing will be arranged by Human Resources. Arrangements will be confirmed in writing giving at least 5 days notice.

Notification of the hearing will include the following:

- a clear statement of the performance problem and the steps that have been taken to address it
- a record of the monitoring and progress to date
- the date time and location of the hearing
- the names of the panel members
- the right to seek representation
- any documentation that either party wishes to refer to
- the fact that a decision may be taken to dismiss on the grounds of capability
- the right to appeal
- the fact that the hearing will go ahead in the employee's absence if they fail to attend without reasonable excuse.

All documents to be included in the hearing will be sent to all parties. It is important to remember that the hearing is a formal process but it is not intended to be adversarial.

Employees may bring a colleague or trade union representative to the hearing. They will be able to participate fully but have no legal right to answer questions on the employee's behalf. He or she has the right to address the hearing and will be allowed to ask questions. The colleague/trade union representative will also be given reasonable time to confer privately with the employee.

If the colleague is an employee of Bishop Grosseteste University, reasonable paid time off will be granted to attend the hearing and meet with the employee before and afterwards.

If the employee wishes to attend the hearing but is absent due to sickness, or some other reason, or their colleague/trade union representative is unable to attend, the meeting may be postponed and rearranged within 5 days or as soon as reasonably practicable. If the employee or the colleague/trade union representative is unable to attend on the second occasion, their case and/or representation by their colleague/trade union representative may be considered based on written documentation. Advice should be sought from Human Resources before deciding to proceed with a case in the absence of the employee and/or their representative.

13. Roles and Responsibilities at the Hearing

Panel Chair. This will be the Vice Chancellor, who has the authority to dismiss if required.

A second independent manager.

An HR Adviser to contribute specialist knowledge of procedural issues, relevant policies and employment matters. He/she will participate fully in discussions about the case but will not be party to the final decision.

A note-taker. The complete background of the case may be requested at an appeal hearing or at an employment tribunal. It is therefore essential that comprehensive records are made. Notes will not be verbatim.

The Chair will introduce the parties present and clarify the procedure. Both parties then present their case, and then all parties withdraw to allow the panel to make their decision. If further clarification is needed then all parties must be invited back into the room. At the end of the hearing the Chair of the panel makes a written summary of the decision. All parties are recalled and the Chair reads out the panel's decision and any related action plans. This is confirmed to the employee in writing.

14. Possible outcomes

- extension of the previous review period (in which case a further hearing may take place at the end of the period)
- through consultation with the employee, redeployment/transfer to alternative work
- dismissal with contractual notice.

The outcome of the formal hearing will be confirmed to the employee in writing outlining the right of appeal.

15. Appeals

The employee will have the right of appeal against any formal action taken under this procedure. If the employee wishes to appeal they must do so in writing within 10 days of the date on which the decision is confirmed in writing.

16. Grounds of Appeal

The employee must state the grounds upon which they seek to appeal. Grounds for appeal are:

- that there was a defect in the procedure
- that new information has subsequently come to light
- that not all the information was considered at the time
- that an inconsistent or inappropriately harsh penalty was applied, or the decision appears unreasonable in light of the evidence.

An employee who wishes to appeal against dismissal should do so by writing to the Clerk to University Council. The appeal will be heard by a panel of 3 University Council members. An employee who wishes to appeal against action short of dismissal should do so by writing to the Head of Human Resources. The appeal will be heard by senior managers not previously involved in the case and will be chaired by a University Council member.

Following notification an appeal hearing will be arranged giving at least 5 working days notice. The notice of the appeal will include:

- a clear statement of the decision which has led to the appeal
- the date, time and location of the hearing
- the names of the chair and panel members
- the name of the person who will represent the management position
- the employee's right to have representation
- the potential outcomes
- that there is no further right of appeal.

A full set of documentation to be considered at the appeal including any new statements or evidence will be sent to all parties. Employees have the right to be accompanied by a work colleague or a trade union representative.

17. New evidence

New evidence may be considered subject to the requirement that any evidence is submitted before the hearing. Where new evidence is submitted it should state clearly what the evidence is and why it is believed it will alter the original decision.

18. Re-hearing

If the grounds for the appeal relate to a defect in the original hearing, it would be advisable to have a re-hearing. If the appeal chair determines that a full re-hearing is necessary everyone will be informed in advance and the procedure will follow the same format as the original hearing and all parties and witnesses will be invited. The panel and possible outcomes will be consistent with an appeal hearing

19. The Appeal Panel (action short of dismissal)

Panel Chair

This will be a relevant senior manager who has the authority to agree the outcome.

A second independent manager

An HR Adviser/representative

His/her prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. He/she will participate fully in any discussions but will not be party to the final decision.

A note taker

The complete history and background of a case may be requested at an employment tribunal. It is therefore essential that comprehensive records are made at any level disciplinary action.

20. The Appeal Panel (dismissal)

The appeal panel will consist of 3 University Council members, and be advised by an HR Adviser/legal representative who will contribute specialist knowledge but will take no part in the decision.

A note taker

21. Documents

All parties to the appeal hearing will have available all of the documents presented to the original hearing plus the following:

- the record of the original hearing
- the letter of appeal and information submitted by the employee.

22. Possible outcomes

The outcome will be either:

- the case against the employee is upheld (in whole or in part), the sanction will then be the same or a lesser penalty
- the case against the employee is not upheld and the sanction is overturned.

In the case of a dismissal, the appeal does not have to take place before the dismissal takes effect although wherever possible the appeal will be held before the employee is dismissed. If the appeal fails, the effective date of termination will stand.

The outcome of the appeal will be confirmed in writing.