



Capability and Conduct

At some point during their employment with BSU any line manager may be required to deal with performance issues as a result of an employee's capability or conduct. When considering whether to instigate capability or disciplinary (informal or formal) proceedings, it is important to carefully consider the perceived reasons for the employee's decline in performance or conduct and to ensure you understand the differences between the two.

Capability vs conduct

It is important to understand and make the distinction between (prolonged) poor performance that may be due to a lack of capability/competence (skills, ability, aptitude or knowledge), and which the employee is willing to, or 'can', address through support and training, as opposed to misconduct, where the employee has the ability to improve but fails to, or won't, attain the required standard(s) of behaviour or performance.

A lack of capability exists where despite an employee's best efforts, he or she is simply unable to perform the job to the required standard as set by the University. In this scenario it is the agreed University standard that is relevant, and not the manager's personal opinion of the employee. BSU recognises that employees do not choose to perform their work badly, to make mistakes, and fail to complete tasks or to have poor relationships with others. However where such issues do arise it is the line manager's role to discuss these concerns with the employee as early as possible.

Further clarification on the differences between capability and conduct can be found in the University's Capability Procedure as follows:

"Conduct is within the employee's control and as such, issues of conduct will be dealt with via the Disciplinary Procedure. Capability, on the other hand, refers to the capacity and ability of the employee to perform their job. Without adequate capability, the best efforts and motivation from the individual will not be enough".

Some examples of behaviour(s) that may be dealt with under the Capability Procedure are:

- Sustained decline in volume of work
- Noticeable decline in the quality of work i.e. errors, mistakes, omissions
- Decline in attendance due to intermittent sickness, exceeding BSU trigger points

- Regular instances of poor timekeeping
- Concerns about teaching quality

Examples of misconduct

Some example of misconduct and gross misconduct can be found in our [guide](#).

Please note that the examples given are not intended to be exhaustive but rather to give an indication of a number of issues and/or concerns that could be the subject of capability or disciplinary (informal or formal) proceedings.

Once it has been established that there is a capability or disciplinary issue which requires attention and/or action please refer to either the relevant further guidance on the Capability Procedure below.

Capability procedure

The University is committed to supporting and developing its staff to ensure that they are able to fulfil their roles and responsibilities to a high standard of competence. The University wishes to create an environment in which successful performance is both encouraged and rewarded. It is in the interests of both staff and students that the University ensures that employees achieve and maintain such a standard in their work. Through the University's recruitment procedures, every effort will be made to ensure that new staff have the appropriate skills and competencies or a clear potential to achieve them for the roles they are recruited to fulfil. Staff will be informed at the start of the employment what their responsibilities are and the standards of work performance required. This will be reinforced and supported through appropriate induction, training and regular feedback on work performance.

Managers are responsible for addressing performance issues as early as possible and for taking appropriate action. They will do this on a day-to-day basis via, for example, regular communication and feedback to staff.

The distinction is drawn between issues of capability and conduct. Conduct is within the employee's control and as such, issues of conduct will be dealt with via the Disciplinary Procedure. Capability, on the other hand, refers to the capacity and ability of the employee to perform their job. Without adequate capability, the best efforts and motivation from the individual will not be enough.

Purpose

The purpose of this procedure is to assist employees who are persistently failing to reach the required standards of work performance. It is also to ensure, in the interests of equity that the line manager in dealing with issues of capability follows a standard framework of action when dealing with issues of capability.

An employee's level of work performance varies over time. In the case of temporary poor performance the matter can normally be resolved by giving guidance and support. In the majority of cases work performance does not fall to unacceptable levels for prolonged periods, but where it does every attempt must be made to provide support and guidance.

However, it is important to note that a continued failure by the employee to achieve the standards reasonably required of them will result in the use of the Capability Procedure. If investigation shows the poor performance continues it could result in a manager invoking the Disciplinary procedure which could ultimately lead to dismissal.

General principles

The intention of applying this procedure is to effect improvement in an employee's performance by guidance and support.

This procedure is only used with employees who are not within their probation period.

The University recognizes the rights of academic staff with regard to their role in testing and questioning wisdom and current opinion.

All written records used as a result of following the Capability process will be filed on the employee's Human Resources file, held within the Human Resources Department and retained for 12 months of the date of the last correspondence, after which they will be destroyed.

Managers will receive appropriate training to enable them to deal with performance issues effectively. All possible factors will need to be considered when determining reasons for poor performance, which include:

- Skills and competencies
- Working environment

- Organisational environment
- Personal/health reasons

The procedure

Stage one

When a manager identifies that an employee's work performance is continually below an acceptable level, or when the manager decides that normal day-to-day management methods have not been adequate, they must investigate and gather appropriate evidence.

If the evidence indicates a matter of Capability, then the manager will arrange to meet the employee together with a member of the Human Resources Department. Our Performance Matters DVD is available to hire from HR, to help managers to give constructive criticism well to improve performance.

The manager will:

- Give at least five days' notice of the meeting
- Provide the employee at the time, in writing with reasons for the meeting and copies of any relevant paperwork that is to be referred to at the meeting
- Notify the employee of their right to representation at the meeting by either a trade union representative or a work colleague

During the meeting, the manager will refer to the expected standards of work performance and advise the employee of the areas of shortfall in their work.

The manager will then explore with the employee the reasons for the shortfall in performance and agree a course of action to effect an improvement, together with performance targets. These targets will be specific, measurable and achievable within the time frame agreed. The manager needs to discuss with the employee areas of training, support and guidance and resources or equipment that could be offered to the employee. A review date after a reasonable interval will also be agreed.

The Human Resources Department will keep on file a record of the meeting, together with the agreed performance targets and a copy will be sent to the employee.

Prior to the review meeting, the employee must be given any training, support and guidance, as agreed at the first meeting, to assist in the achievement of the performance targets. The manager or another nominated person will monitor the employee's performance. Advice and guidance may be sought from other managers within the institution, where appropriate.

The Stage One review meeting will include those present at the Stage One meeting, wherever possible. The employee will be given five days' notice of the meeting, in writing and advised of their right to representation.

At the review date, the manager will assess whether the employee's performance has improved sufficiently and consistently and give a clear indication of the outcome of the monitoring process. The employee will be given the opportunity to present their views. The manager can then determine what further action should be taken from the following:

- If performance has been satisfactory, there is no further action under the Capability Procedure
- If there has not been a clear identification of significant improvement, then the Manager will move to Stage 2. This can be done immediately after the review meeting or be adjourned, if appropriate

Stage two

The manager will inform the employee where the areas of shortfall in performance persist and will indicate how improvement can be affected. All areas of training, support and guidance will need to be explored to ensure all assistance is being given to the employee and where appropriate, arranged accordingly.

The employee will be warned that unless improvement over a sustained period of time is evident at the next review meeting, the disciplinary procedure will be invoked. The employee must also be informed of the potential for dismissal should an improvement in performance not be effected.

A further set of performance targets and review date will be agreed.

A record of the meeting will be sent to the employee.

The Stage Two review meeting will include those present at the Stage Two meeting, wherever possible. The employee will be given five days' notice of the

meeting, in writing and advised of their right to representation.

At the review date, the manager will assess whether the employee's performance has improved sufficiently and consistently and give a clear indication of the outcome of the monitoring process. The employee will be given the opportunity to present their views. The manager can then determine what further action should be taken from the following:

- If performance has been satisfactory, there is no further action under the Capability Procedure.
- If there has not been a clear identification of significant improvement, then the Manager will move to Stage Three. This can be done immediately after the review meeting or be adjourned, if appropriate

Stage three

If the employee has attained the required improvement, the manager should arrange a further review date to continue to monitor performance. If performance continues at the acceptable level, then the manager can agree that the Capability procedure no longer be used.

If however, the issue of performance is of consistency, then the manager will continue to monitor performance under Stage Two of the Capability Procedure.

As with Stage One, the employee is to be given five days' notice, provided with copies of any relevant paperwork and be advised of their right to representation now, and any future monitoring meetings. As with all other meetings, those attending the meeting should be the same as previously, wherever possible.

If both the Line Manager and Human Resources agree that no change has been effected, then the Manager will, in conjunction with the Human Resources Department, invoke the Disciplinary Procedure of which one potential outcome is dismissal.

How to deal with issues of capability and/or conduct - Informal process

Except in rare cases of clear and/or irrefutable (Serious or Gross) Misconduct which is likely to result in suspension and/or dismissal, there is an expectation that line managers will attempt to address matters of capability or conduct as they arise and

informally with the employee in the first instance. Not only is this good practice, but it can often result in the desired improvements being achieved, with additional training and support where appropriate, without the need to resort to a formal process. In some cases the individual may simply not be aware that their performance and/or behaviour is not (consistently) meeting the required standards and drawing this to their attention will be enough to ensure they achieve and maintain the required standards. Where day to day conversations between line manager and staff member are not sufficient to improve performance, the line manager may want to take a more structured approach and arrange to meet with the member of staff informally to discuss the issue(s) in more detail.

For further guidance, see also:

- Principles, point one of the the Disciplinary Policy and Procedure
- Introduction, second paragraph of the Capability Procedure above
- Dealing with unsatisfactory performance, Probationary Procedure

Managing performance

If the line manager's concern is a perceived performance issue see Definitions of Capability and Conduct then the line manager should agree to meet informally with the employee to discuss their concerns. For example, if an employee arrives late for work on several occasions, makes the same minor mistake repeatedly, or takes too many breaks, an informal discussion between the line manager and employee is likely to be appropriate to address these concerns. The aim of this meeting would be to effect an improvement in the employee's performance through raising their awareness of the issue(s), offering support, guidance and training, and by agreeing actions to achieve improvement.

Further guidance on how to conduct an informal meeting. The makeup of these meetings will vary depending upon the area of performance and the seriousness of the concern. Open, honest and unambiguous communication is essential when conducting a meeting with an employee to discuss unsatisfactory performance and guidance is available here

If an act of misconduct or poor performance is of a more serious nature see Definitions of Capability and Conduct it would not usually be appropriate for the line manager to address this using an informal process. In serious circumstances such as these, they will usually implement the formal Capability Procedure or Disciplinary

Policy and Procedure immediately.

Guidance is also available from your HR Business Partner and further line manager guidance is available through [Lifeworks](#) or you can hire our Performance Matters DVD to assist you in conducting performance meetings.

Possible causes of unsatisfactory performance

- Inadequate or insufficient training;
- Poor systems of work, out-of-date policies or inadequate procedures that do not permit efficient or effective work
- Tools and equipment that do not work properly or frequently break down
- Poor quality or inadequate supervision and/or support
- Lack of understanding on the employee's part about his or her job duties, priorities or goals, which may arise because no one has properly explained these issues or given the employee feedback
- Unclear instructions
- Work overload, causing stress and fatigue
- Unrealistic targets or deadlines that are virtually impossible for the employee to achieve
- Poor working relationships causing the employee worry, upset or stress
- Bullying or harassment
- Physical or mental ill health, for example where the employee's state of health, or medication taken to deal with it, is causing tiredness
- Personal problems that would inevitably affect the employee's concentration.

Structure of an informal or formal capability meeting - checklist

At a capability meeting, the line manager should:

- (If the meeting is informal) Ensure that the employee is aware that this is an informal discussion and will not result in any disciplinary or capability sanction.
- Explain to the employee the reason for the meeting, i.e. discuss the possible cause or causes of the poor performance/competence/capability/conduct.
- Explain their concerns, giving specific examples to the employee and provide them with any relevant evidence, e.g. a student complaint.

- Explain the reasons for the concerns including the consequences for the University when the employee makes mistakes or misses deadlines. If the concern is for poor performance, it may be appropriate to remind the employee that they are not being blamed for the problem.
- If appropriate, ask the employee what they enjoy about their job. This may help to make the discussion easier and reduce any defensiveness on the employee's part.
- Listen to what the employee has to say in response to the allegations or concerns.
- Seek the employee's agreement that there is a problem with certain aspects of his/her performance.
- Ask the employee what they think is the root cause of the problem. Possible causes of unsatisfactory performance are given here
- Take any explanation or mitigating circumstances into consideration when discussing ways to address the area of concern. If the employee has problems in their personal life remind them of our Employee Assistance Programme, [Lifeworks](#).
- Check that their job description is a true reflection of the duties of the role and make sure that the employee has a clear understanding of what is expected in terms of job duties, outputs and targets.
- Agree suitable goals and timescales for improvement and agree a Performance Improvement Plan. The detail of the objective will vary upon the cause of concern and whether any specific cause of unsatisfactory performance has been identified. The plan should include training needs if appropriate and detail any other additional support which is required. (link to Performance Improvement Plan template)
- If appropriate, restate to the employee that they expect an improvement in the employee's conduct or performance and that a failure to improve will result in formal or further capability or disciplinary proceedings.
- Agree the next review date and confirm the employee will be sent a summary of the meeting and Performance Improvement Plan.

