



# Ruskin College Oxford

## CAPABILITY POLICY AND PROCEDURE

**Created:** March 2016

**Approved:** Governing Executive, Joint Agreement between  
Ruskin College, UCU and Unison

**Last Reviewed:** -

**Responsibility for Review:** JNC, Governing Executive

**Date of Next Review:** July 2019

## **CAPABILITY POLICY AND PROCEDURE**

### **1.0 Policy**

- 1.1 Ruskin College recognises its responsibility towards employees and our duties under the Health and Safety at Work Act 1974, in regards to managing issues relating to employee capability sensitively, in so far as it is reasonable and possible to do so. Ruskin College recognises that from time to time employees may experience difficulties, which impact on their ability to carry out their duties. Ruskin College is required to have in place a clear policy and procedure to enable employees to achieve the improvement required.
- 1.2 This Policy and Procedure applies to all employees of the College, where the employee fails to reach or maintain the required standards of job performance through a lack of knowledge, skills or ability.
- 1.3 The Policy will operate in accordance with the legislative frameworks, such as they apply, and in so far as it is reasonable to be taken into consideration, the Equality Act 2010 amended 2012, Health and Safety at Work Act 1974, and Access to Medical Data 1988. This Policy and Procedure may follow on from any other policy which identifies a mismatch in performance to the standard required. The application of the policy in relation to sickness and performance is set out below.

### **2.0 Application of the Policy**

- 2.1 Ruskin College reserves the right to implement the capability procedure at any of the stages as set out below, taking into account the relevant circumstances including the level of poor performance, the nature of the role and the performance issue in question. In cases of gross negligence or in any case involving an individual who has not yet completed their probationary period, dismissal without following the capability procedure may be appropriate.

### **3.0 Principles**

- 3.1 The following guiding principles are to be observed in implementing the Capability Policy and procedures:-
- 3.1.1 Employees are expected to be capable of carrying out the work they are engaged to do at the required standard.
  - 3.1.2 Reasonable efforts should be made to informally address issues of underperformance to reduce the need to instigate formal procedures.
  - 3.1.3 At any formal meetings employees will have the right to be accompanied by a work colleague or trade union representative.

- 3.1.3 Employees must take all reasonable steps to attend formal capability meetings; failure to attend without good reason may be treated as misconduct.
  - 3.1.5 Employees will have the right to state their cases at formal capability meetings before decisions are reached.
  - 3.1.6 Management will have support and advice available to them by way of Human Resources.
  - 3.1.7 A note taker may be arranged by the manager copies of the notes will be sent to the employee and their representative within an agreed timescale.
  - 3.1.8 If appropriate managers should seeks advice with respect to the Equality Act – provision for supporting, retaining and recruiting disabled employees.
  - 3.1.9 This policy and procedures should be adhered to in line with the Data Protection Act and Section 1.3.
  - 3.1.10 An Improvement Note will be disregarded on the successful achievement of the standards required after 12 months or such other period as specified at the time it is issued.
- 3.2 Managers are responsible for setting realistic standards of performance and attendance, for explaining these standards to the employee and for the provision of training, support and guidance where appropriate, providing sufficient opportunity to perform well.
- 3.3 The manager is responsible for raising any issue with employees at or around the time they arise. Managers will be expected to have raised any issue with employee informally prior to instigating any formal procedures. It is expected that managers will have, during the informal procedure, identified and put in place any training, development, advice, guidance or other support. During this process the manager will advise the employee that failure to reach the required performance standard may result in the formal procedure being instigated. This should be confirmed in writing.
- 3.4 Where the informal action does not achieve satisfactory results or if informal action is not appropriate, the Formal Procedure will be implemented.

#### 4.0 **Stage 1 – Formal Capability Meeting**

4.1 The employee's line manager will:

- a) Arrange to meet the employee, providing adequate notice of not less than working 5 days in writing;
- b) Explore with the employee the reasons for the under-performance / explain the concerns of management;
- c) Seek to identify the source/cause for the under-performance;
- d) Assess the extent to which Human Resources/Staff Development support is required;

e) Explain the impact of the poor performance on learners/college and to look at ways in which it is possible to address the shortfall;

f) Establish key milestones for improving attendance/performance by way of an action plan in the form of a Formal Improvement Note which must include what standard is required and timescales along with a review date. (Appendix 1). An interim review meeting should be clearly set out before the final review to support the employee to achieve the required standard(s);

g) A First Written Warning may be issued if the standard of performance has not been achieved and escalate to stage 2. The line manager will advise the employee that failure to reach the required performance standard may result in further formal action being taken and the potential for dismissal. A first written warning will be disregarded for capability purposes after 12 months or such other period as specified at the time it is issued.

## **5.0 Stage 2 – Formal Capability Meeting**

5.1 The line manager will as identified at Stage 1; arrange a meeting to review performance. The line manager will in conjunction with the employee:

a) Look at the extent to which progress has been made;

b) Agree the next step – this may include setting a further review meeting in light of improvements achieved or:

c) Agree the need to investigate further, seeking appropriate external advice, which may include Occupational Health, Health and Work Service; or some other support to improve performance;

d) In the case of Occupational Health, the employee's permission to Access Medical Records should be obtained or clarification provided, which sets out the options open to the employer in the absence of approval;

e) Agree a revised Formal Improvement Note which must include what standard is required and timescales along with a review date. An interim review meeting should be clearly set out before the final review to support the employee to achieve the required standard(s);

f) The decision will be taken based on the information made available to management by way of medical data and/or the extent to which the employee has fully engaged in measures to improve performance whether a Final Written Warning should be issued;

g) The Final Warning should stipulate that failure to reach the required performance standard may result in dismissal or redeployment to another position. A final written warning will be disregarded for capability purposes after 12 months or such other period as specified at the time it is issued. In exceptional circumstances, a warning may remain in force for more than 12 month or never be removed.

## **6.0 Stage 3 – Formal Capability Meeting**

6.1 Where it is apparent that the employee is unable to (1) to achieve satisfactory performance required or (2) return to the work role, line management must, having considered reasonable adjustments and having investigated fully all the possible options, must seek appropriate advice from Human Resources. Where the possible outcome relates to ill health retirement/termination based on performance grounds, the management team will need to approve any curtailment of employment.

6.2 Possible outcomes of the meeting may include but are not limited to:

6.2.1 Redeployment to another position, this may include demotion.

6.2.2 Dismissal with notice

6.2.3 No further action

6.3 The line manager will in conjunction with the employee, their representative and Human Resources:

a) Arrange to meet with the employee, giving adequate notice of not less than 5 working days;

b) During the meeting, the line manager will set out the steps and measures taken to achieve the required attendance/performance and;

c) Explain why the absence/performance continues to impact on the organisation/learners/colleagues and;

d) Allow the employee to respond fully to the issues of poor attendance/performance and;

e) Allow the line manager to present their recommendation for alternative work arrangements or the curtailment of employment;

f) A nominated member of the management team, having heard the information presented will, after an adjournment, be able to make their findings and recommendation known.

g) Where the curtailment of employment is being recommended, the management team member should have delegated authority to act in that capacity and be asked to reside over the meeting convened at Stage 3.

h) Human Resources will within 5 working days of the meeting confirm the outcome, setting out any right of appeal against the decision reached.

i) The employee will have 5 working days in which to appeal against the decision to terminate employment or the alternative options where such measures have been offered, in writing to the Principal, setting out their grounds.

## **7.0 Stage 4 Right of Appeal**

7.1 The employee will have a right of appeal against the decision under all formal stages of the procedure. All appeals will be conducted in accordance with Appeals procedures for Discipline and Grievance.

**FORMAL IMPROVEMENT NOTE**

Employee Name	
Job Title	
Line Manager	

Clearly detailed - Improvement required	Date by which this improvement should be achieved	Interim Review Date	Not achieved (NA)  Achieved (A)	Final Review Date	Not achieved (NA)  Achieved (A)

**Summary Notes of the interim review meeting: (Date)**

Employee signature:

Date:

Line manager signature:

Date:

**Summary Notes of the final review meeting: (Date)**

Employee signature:

Date:

Line manager signature:

Date:

Improvement achieved: Yes/No

Warning issued: Yes/No

(No – extension of improvement period granted or some other substantial reason permitted)

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