MANAGER’S GUIDE: CAPABILITY AND PERFORMANCE

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1 Purpose of this guide

The purpose of the manager’s guide is to provide practical advice to managers who are authorised to take action within the University’s Capability/Performance Management Procedure\(^1\) and others who may be involved at an earlier stage (see section 4) or in appeals. The guide is not a substitute for formal training but a supplement to this training. Nor is it a substitute for seeking advice from the appropriate Personnel Manager/Officer within Personnel and Staff Development. It is a requirement of the University’s Capability/Performance Management Procedure that a representative of the Director of Personnel and Staff Development is involved at all stages and managers should seek advice from their Personnel Manager/Officer at the earliest opportunity in every case.

2 Purpose of the Capability/Performance Management Procedure

All organisations have required standards of behaviour, conduct and performance. When required standards are not adhered to, corrective action needs to be taken. The purpose of the Capability/Performance Procedure is primarily to help and encourage employees to achieve and maintain required standards of performance. The Procedure helps ensure – for the benefit of both the University as an employer and its employees - that any shortfalls in an employee's performance are dealt with effectively and in a reasonable, fair and consistent manner.

In summary, ‘fair’ and ‘reasonable’ mean (ACAS Code of Practice):

- employers should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions;
- employers should act consistently;
- employers should carry out any necessary investigations to establish the facts of the case before any decisions are made under the formal Procedure;
- employers should inform employees of the basis of the problem and give them an opportunity to offer an explanation and to put his/her version and his/her facts forward before any decisions are made under the formal Procedure;
- employers should allow employees to be accompanied at any formal meeting under the formal Procedure;
- employers should allow an employee to appeal against any decision made under the formal Procedure.

The University has developed its Capability/Performance Procedure to take account of the ACAS Code of Practice on disciplinary procedures and good employment practice. Trade union representatives have been consulted in the development of the Procedure. Failure to follow a fair procedure could result in the disciplinary action being held to be unfair. In cases of dismissal a claim could be brought to an Employment Tribunal which in turn could lead to heavy financial penalties for the University, which would be borne by the employing School or Service.

3 Responsibilities of managers and employees

Manager’s Obligations

It is the responsibility of the University as the employer to ensure that employees are aware of the standards of performance required of them, that they have been provided with reasonable opportunity to fulfil those requirements and understand the consequences of not meeting them.

In particular, managers should ensure that employees:

\(^1\) [http://admin.exeter.ac.uk/personnel/~docs/capability_performance_procedure.pdf](http://admin.exeter.ac.uk/personnel/~docs/capability_performance_procedure.pdf)
- are aware of what is expected of them in their role and function;
- are given the necessary guidance and training to fulfil their role and to meet required standards of performance;
- receive regular feedback on their work and performance.

**Employees' Obligations**

Employees are expected to:

- work within allocated resources and University regulations to achieve all the requirements of their role to the required standard and within the required timescales;
- work to the best of their ability and participate in self development activities and as agreed with their manager;
- attend work in accordance with their Conditions of Employment and make the best use of their time at work;
- fully engage in discussions about their role and performance and development, including the Performance and Development Review (PDR) process;

### 4 Managing issues before they become problems

Many potential issues can be resolved by the line manager intervening at an early stage as part of their normal day-to-day responsibilities as a manager: ‘A quiet word is often all that is required to resolve an issue’ (ACAS Code of Practice). In many instances, good management should prevent recourse to formal procedures.

The following procedures and management actions are valuable resources for managers in managing performance:

- effective recruitment and selection;
- induction;
- regular reviews during the probationary period;
- outlining University and School/Service objectives and standards in team meetings and away days etc;
- regular effective (two-way) communication;
- setting ‘SMART’ targets – ie Specific, Measurable, Achievable, Relevant and Time related – see PDR training and guidance for reviewers for more information;
- review of work targets and regular, meaningful feedback on performance, both through the Performance and Development Review (PDR) and periodic ‘interim’ reviews of PDR targets;
- discussion of the employee’s development needs and aspirations and clear guidance on which training should be undertaken and whose responsibility it is to arrange it;
- ‘post-event’ evaluation of training with the employee.

In cases of minor shortfalls in performance, the immediate line manager should discuss their concerns with the employee to ensure that the employee is:

- aware of the concerns;
- knows what is required to meet expected standards of conduct;
- made aware of the timescale over which an improvement is required;
- made aware of the consequences of not achieving the required standard.

This is not a stage in the formal Procedure. It is part of the standard day-to-day relationship between managers and the people they manage. However, in certain circumstances it will
be necessary for the discussion and outcome to be confirmed in writing as it may become necessary to pursue the issue through the formal Procedure if there is a re-occurrence or a failure to improve to the required standard.

The process of advising, guiding, counselling and supporting employees described in this section should be understood as a positive process which leads to improvement, not as a punishment. It is designed to help and encourage employees to achieve and maintain acceptable standards of performance and avoid the need to apply the formal Procedure.

**Preparation**

Where you have identified a potential problem or concern with an employee's performance, before approaching the employee, you should prepare yourself by assembling all the necessary information: what has the employee done/not done? what standards do you expect (in terms of behaviour, conduct or performance)? have these standards been clearly communicated to the individual concerned?

Before speaking to the employee, you should also seek to collect firm evidence of the shortfalls in their performance - by observation and, if necessary talking to other managers. This will enable you, when you come to talk with the employee, to talk factually and objectively, and about real activity and events, rather than about generalisms which cannot be supported.

Such evidence may include:

- PDR forms detailing agreed performance targets and timescales;
- records of training attended;
- emails giving instructions about work to be undertaken and deadlines for completion;
- notes of discussions about the employee's work or specific activities/projects;
- dates of team meetings when priorities and standards were presented and discussed;
- examples of the employee's work/output which show omissions or errors or unsatisfactory work;
- up-to-date records of achievement or work in progress (eg latest information from Research Accounting about grant applications);
- evidence (for staff in academic roles) that the School's workload allocation model has been fairly applied and that the employee has sufficient time allocation to fulfil the duties which are causing concern;
- comparison of performance with colleagues doing similar work.

Remembering that the purpose is to improve performance, you need to spend some time planning how you want to manage the meeting with the employee so that it achieves a positive outcome. You need to:

- be able to describe the employee's shortcomings in a clear, objective way: the factual evidence you have collected will help you to do this;
- be clear about the standards you expect, so that you can communicate them effectively to the employee;
- consider how the employee may react and plan for such reactions;
- consider any factors which you are aware of which may be affecting the employee's work and performance -eg health (check their absence record), personal or domestic difficulties etc;
- determine how you would like the to should be put right or what should be done differently in the future.

(Staff Learning and Development offer a range of training programmes for managers in target-setting and listening and people management skills.)
Discussion
The following framework for discussions is suggested:

Opening
- set the tone (remember that this is a positive and supportive discussion, the purpose of which is to improve performance);
- explain the purpose of the discussion;
- identify the problem(s) - describe objectively and factually and refer to the factual evidence;
- be assertive without being threatening.

Exploration
- encourage the employee to understand that there is a problem and get the employee to take responsibility for the problem;
- ask open questions to explore reasons for the problem;
- in particular, ask the employee if there are any circumstances which you (as manager) may not be aware of which may be affecting their performance - ie ensure that the employee has the opportunity to suggest that there may be health or other personal reasons which account for the shortfall in their performance;
- respond appropriately to the employee's reactions;
- get back to the point at issue do not allow yourself to be drawn into an argument or to be sidetracked;
- engage the employee and work towards achieving consensus by getting the employee to suggest realistic solutions, targets and outcomes.

Ending
Ideally, the manager should aim to reach agreement with the employee on the following points, but where it is not possible to reach a consensus, the manager should make the University’s expectations clear:
- the required standards for the job - ie set targets which are 'SMART';
- where the employee is currently falling short of these standards (ie the gap between these standards and current performance);
- the action required to close that gap – what they are going to do, what you are going to do, the timescale for improvement (eg, what support, training or other advice and guidance will be provided, who is responsible for organising and providing it and what are the timescales for these interventions);
- follow up and review - the employee should be given a reasonable and realistic timescale to complete the agreed targets, ideally with 'milestones' which can be reviewed at regular intervals to check that the employee is 'on track' to meet the targets;
- summarise what you have agreed to avoid misunderstanding;
- make a record if necessary (date, brief details of discussion and agreed action). This will be helpful if the employee’s performance does not improve to the standard required. (In particular, you should make a note of the employee’s response to the question about whether there are any circumstances which may be affecting their performance.)

It many cases, it will be appropriate to confirm the outcome of the discussion to the employee in writing and advise them of the consequences - ie application of the formal Capability/Performance Procedure - if their performance does not improve to the required standard within the timescale agreed.
Options for Support

Although you will want to encourage the employee to take responsibility for their own performance, you should provide as much support as necessary. The types of support which may be appropriate include:

- specifying instructions for work more clearly;
- arranging additional off-the-job or on-the-job training;
- the employee and manager meeting regularly to discuss work issues, priorities etc and how to manage them;
- a mentoring arrangement with a more senior or more experienced colleague;
- referring the employee to the Occupational Health Service if the employee, during the discussion (or if you have other good reason), advises you that there are health-related reasons which might explain the shortfall in their performance. (You should seek advice from Personnel and Staff Development who will arrange a management referral - a 'self-referral' by the employee would not be appropriate in such circumstances.)
- if there are other (non-health) personal issues which the employee identifies, encouraging the employee to contact the Staff Counselling Service (access to the Staff Counselling Service is via the Occupational Health Service - a self-referral may be more appropriate). Alternatively, consider allowing time off or compassionate leave or introducing a more flexible working arrangement for a fixed period where the employee has a short term domestic difficulty which may be contributing to the problem and where allowing the employee time off would help to correct this.
- considering whether a temporary adjustment to the employee's workload or priorities, or (for staff in academic roles) an adjustment to duties within the School's workload allocation model is necessary.

Next steps

After speaking to the employee, the manager should:

- continue to monitor the employee’s performance over the agreed timescale;
- arrange regular reviews to give feedback - managers must ensure that these reviews take place and that an appropriate record is maintained;
- make sure they deliver on the action agreed (e.g. training, additional support);
- if the employee’s performance does improve to the standard required then make a point of telling them and encourage them to continue;
- if the employee’s performance does not improve to the standard required – i.e. if there is no improvement, or what improvement there has been still falls short of the standard required – then it will be necessary to speak to the employee again. You will need to have detailed records and evidence of the employee’s performance and how it has (or has not) improved since your earlier conversation;
- take advice from Personnel and Staff Development as to whether it is necessary to move forward to the formal Procedure or to continue to speak to the employee and review performance outside of the formal Procedure.

5 Who can take action under the Capability/Performance Procedure

Formal action under the Capability/Performance Procedure may only be taken by a manager with the appropriate authority.

The Vice-Chancellor, Registrar and Secretary, Deputy Vice-Chancellors, Heads of School, Heads of Service and School Managers have, by virtue of the offices they hold, been delegated authority by the University to take action at all stages detailed in paragraph 5, including the authority to dismiss. However, such decisions must be taken in accordance
with this procedure and following consultation with their Personnel Manager/Officer. Personnel and Staff Development have arranged training programmes in the use of the Capability/Performance Procedure for these office holders and it is the expectation of the University that new office holders will have attended this training before they take any action under the Procedure.

Delegated authority may be given to other named managers to take defined levels of action in accordance with this procedure following appropriate training and with the agreement of the Director of Personnel and Staff Development.

For staff in the academic job families (i.e., Lecturers, Senior Lecturers, Associate Professors, Professors, Associate Research Fellows, Research Fellows, Senior Research Fellows, Associate Teaching Fellows, Teaching Fellows, and Senior Teaching Fellows), action under the Procedure must be taken by another employee in the academic job families who has a management responsibility and has been authorised to take action under the Procedure. Managers in the support job family are not authorised to take action in respect of staff in the academic job families.

Other managers and supervisors/team leaders are authorised, as part of their day-to-day management responsibilities, to take the steps summarised in section 4 of the Procedure to ensure that minor shortfalls in performance are dealt with promptly and appropriately without recourse to the formal Procedure, taking advice from their Personnel Manager/Officer. (See section 4 of this guide.)

Role of the line manager in a formal hearing

Where the line manager who has been advising, guiding, supporting and giving feedback to the employee in accordance with section 4 of this guide is not authorised to take action under the Capability/Performance Procedure, the line manager will be responsible for:

- compiling documentary evidence of targets, achievements against those targets, meetings and discussions which have taken place, training attended etc;
- attending the formal hearing to answer questions about the above.

Where the line manager is authorised to take action under the Capability/Performance Procedure, it will generally be appropriate for them to conduct the hearing. The manager conducting the hearing should consider the case with an open mind and should not have pre-judged the outcome before considering the response of the employee. Making a decision that the employee’s performance should be considered in the context of a formal hearing under the Capability/Performance Procedure is not a pre-judgement, but managers should be careful how they communicate this decision to the employee and should seek advice from Personnel and Staff Development. Exceptionally, it may be necessary to arrange for another authorised manager to conduct the hearing.

6 Roles and Responsibilities

It is important during any application of the formal Capability/Performance Procedure the people fulfilling the roles below are aware of their responsibilities.

Manager

This is the manager who has authority to take action under section 3 of the Procedure and who is ‘the manager who is to conduct the hearing’ under section 5 of the Procedure.

When concerns about an employee’s performance are drawn to their attention, they should discuss these with their Personnel Manager/Officer and decide:

- whether they are minor shortfalls in performance which should be addressed outside the formal Procedure;
- whether to arrange a hearing in accordance with section 5.1 of the Disciplinary Procedure;
• whether an investigation is necessary (see section 7 of this guide, below).

The manager is responsible for deciding how the hearing should be conducted (see section 8 of this guide), including which witnesses should be called to give evidence or be questioned on their statements. During the hearing itself, they are responsible for ensuring that the hearing is fair and that the employee has the opportunity to challenge the evidence, question witnesses and present their case fully.

In exercising this role, they should take advice from the Personnel Manager/Officer appointed to support them. However, it is the manager who has been delegated authority by the University to take action and, after taking advice, it is their responsibility to make a decision in accordance with section 5.4 of the Procedure. Similarly it is the manager who will be required to defend that decision at any appeal or subsequent employment tribunal.

Personnel Manager/Officer

The Personnel Manager/Officer acts on behalf of the Director of Personnel and Staff Development in accordance with paragraph 8 of the ‘Principles and Standards’, advising at all stages to ensure that decisions relating to the Capability/Performance Procedure are fair, reasonable and consistent.

In particular, the Personnel Manager/Officer will:

• advise managers in Schools/Services on the appropriate response to any concerns which are drawn to their attention, ie whether they are minor shortfalls in performance which should be addressed outside the formal Procedure; whether to arrange a hearing in accordance with section 5.1 of the Procedure; and whether an investigation is necessary;

• where a decision is made to arrange a hearing in accordance with section 5.1 of the Procedure, advise the manager on the procedures to be followed;

• attend the hearing to take notes and advise the manager, asking questions where appropriate;

• following the hearing, provide advice to the manager on their decision under section 5.4 of the Procedure;

• advise the manage in the notification of their decision in accordance with section 6 of the Disciplinary Procedure.

Line Manager

Where the line manager is not authorised to take action under the Capability/Performance Procedure, they will be responsible for:

• compiling documentary evidence of targets, achievements against those targets, meetings and discussions which have taken place, training attended etc;

• attending the formal hearing to answer questions about the above.

7 Investigation

In capability/performance management cases, it will not normally be necessary to conduct an investigation in the same way this may be necessary under the Disciplinary Procedure. In most cases, the investigatory stage will simply be the collation of evidence for use at the formal hearing. This evidence may include (as appropriate):

• records of meetings and discussions about the employee’s targets and performance;

• details of training recommended to the employee and records of training attended;

• evidence of the employee’s performance and achievements towards the targets.

In more complex cases, it may be necessary to conduct an investigation similar to an...
investigation into alleged misconduct. Where this may be necessary, the manager should discuss this with Personnel and Staff Development. Any investigation will be conducted in accordance with the guidance on investigations in the Manager Guide to the Disciplinary Procedure. The employee should be notified in writing that an investigation is being conducted.

8 Conducting hearings under the Capability/Performance Procedure

Notification

The manager responsible for conducting the hearing must write to the employee advising him/her of the date, time and place of the hearing and giving details of the allegations or complaints to which he/she is required to respond.

Any supporting evidence should also be included with the letter. (See section 7 of this guide for examples of the supporting evidence which should be included.)

The letter must advise of the right to representation and if a dismissal is contemplated as a possible outcome of the proceedings, this should also be made clear.

The letter should include the names of any witnesses who will be giving evidence at the hearing and advise the employee that they may also present witnesses. The employee should be asked to give prior notification of any witnesses. The employee should be advised that it is their responsibility to arrange for the attendance of any witnesses they are calling.

See appendix for a template/example of the letter calling the employee to a hearing under the Capability/Performance Procedure.

Who should attend?

Only those who have a formal role within the hearing should attend:

- the manager responsible for conducting the hearing;
- the employee;
- the trade union representative or work colleague (‘fellow worker’) accompanying the employee, if any. (The employee has a statutory right to be accompanied by a trade union representative or fellow worker and this right is re-stated in the University’s Capability/Performance Procedure. There is no right to be accompanied by a solicitor. Nor is there a right to be accompanied by a family member or a friend.)
- the line manager of the employee (where they are not the manager conducting the hearing);
- where there has been an investigation in accordance with section 7 of this guide, the investigating officer/team, to answer questions about their investigation. (In certain cases, the investigating officer/team may be asked to formally present their report as the ‘case’ against the employee);
- witnesses as necessary (witnesses should attend to answer questions about the evidence they have given and should withdraw afterwards: they should not be present for the whole of the hearing) – this will generally not be appropriate in hearings under the Capability/Performance Procedure;
- the representative of the Director of Personnel and Staff Development.

(See section 6 on Roles and Responsibilities.)

Postponements

There is a legal right for an employee to request a postponement of up to one week if the person they have chosen to accompany them cannot attend on the scheduled date. The University’s Capability/Performance Procedure extends this, so that employee may make a reasonable request for a hearing to be postponed for up to one week for any reason (eg
sickness). Only one postponement will be permitted and, following such a postponement, the employee should be advised that if they do not attend on the re-arranged date, the University reserves the right to proceed with the meeting in the employee’s absence.

However, before proceeding in the employee’s absence, the manager should consider any reasons given by the employee for their non-attendance and take advice from the representative of the Director of Personnel and Staff Development about whether or not to proceed in the absence of the employee or whether to re-arrange the hearing again.

**Conducting the Hearing**

At the commencement of the hearing, the manager responsible should:

- introduce those present and explain why they are there;
- explain that the purpose of the hearing is to consider the concerns about the employee’s performance detailed in the letter, to give the employee the opportunity to respond to them and to determine, in the light of his/her response and all the circumstances whether any action should be taken within the Capability/Performance Procedure;
- explain how the hearing will be conducted.

It is essential that the employee has a reasonable opportunity to state their case and to give their response to the concerns. Generally, the hearing will follow the following format (although paragraph 5.3 of the Capability/Performance Procedure provides a significant degree of flexibility on how the hearing should be conducted).

**Where the manager conducting the hearing is the line manager**

1. the manager outlines the concerns about the employee’s performance and summarises the interventions which have taken place, referring, as appropriate to the documentary evidence (see Managing issues before they become problems in Section 4 of this guide);
2. the manager give the employee or the person accompanying them the opportunity to make an oral submission;
3. the manager and the representative of the Director of Personnel and Staff Development may ask questions of the employee (who must answer themselves – the person accompanying them is not permitted to answer questions on their behalf);
4. the manager should give the employee or the person accompanying them the opportunity to sum up. (No new evidence should be introduced during summing-up.)
5. the manager should ask everyone to withdraw (except the representative of the Director of Personnel and Staff Development) and advise the employee that they will be notified of the decision in writing within one week of the hearing.

**Where the manager conducting the hearing is not the line manager or where there has been an investigation**

1. the manager invites the line manager to outline the concerns about the employee’s performance and explain the interventions which have taken place, referring, as appropriate to the documentary evidence (see Managing issues before they become problems in Section 4 of this guide) or the manager asks the investigating officer/team to outline the outcomes of their investigation and the evidence against the employee;
2. the manager and the representative of the Director of Personnel and Staff Development may ask questions of the line manager or investigating officer/team;
3. the employee or the person accompanying them may ask questions of the line manager or investigating officer/team;
4. the manager give the employee or the person accompanying them the opportunity to make an oral submission;
(v) the manager and the representative of the Director of Personnel and Staff Development may ask questions of the employee (who must answer themselves – the person accompanying them is not permitted to answer questions on their behalf);

(vi) the manager should give the investigating officer/team the opportunity to sum up;

(vii) the manager should give the employee or the person accompanying them the opportunity to sum up;

(No new evidence should be introduced during summing-up.)

(viii) the manager should ask everyone to withdraw (except the representative of the Director of Personnel and Staff Development) and advise the employee that they will be notified of the decision in writing within one week of the hearing.

Adjournments

During the hearing, either side may request an adjournment for private consultation. Such requests from the employee should not be unreasonably refused.

Adjournment might be necessary if new information comes to light requiring further investigation or consideration by either side.

Where a hearing is adjourned, everyone present should withdraw, with the exception of the representative of the Director of Personnel and Staff Development whose role is to advise the manager on their decision. This will ensure that no information is disclosed to the manager which the employee and the person accompanying them do not have the opportunity to consider or respond to.

Decisions

At the conclusion of the hearing, after everyone has withdrawn, the manager – taking the advice of the representative of the Director of Personnel and Staff Development - should consider everything that has been heard before reaching his/her conclusion. The manager is required to come to a view about the validity or otherwise of the allegation(s) and to decide what action, if any, should be taken.

The manager should consider the following in reaching their decision:

- do I believe that the employee was aware of and understood the expectations of them (ie the performance targets or standards)? What evidence supports this belief?
- do I believe that the employee’s performance is below the standards expected, ie that they have failed to meet all of the targets set within the agreed timescale? What evidence supports this belief?
- do I believe that the employee has had reasonable opportunity to achieve these targets or standards, including access to advice, training, feedback etc? What evidence supports this belief?
- has the employee presented any information or mitigating factors which should be taken into account? What weight should be placed upon these?
- how serious is the shortfall in performance, set against the employee’s general performance in their role or other elements of their role?
- what action, including any ‘live’ formal warnings previously issued under the Capability/Performance Procedure, has previously taken place in response to these shortfalls in performance?

After a hearing, the manager may take one of the following courses of action, according to the circumstances of the case:

(a) To take no action under the Capability/Performance Procedure and advise the employee that the issue is closed.

(b) To take no action under the Capability/Performance Procedure but, if it is concluded that a minor shortfall in performance has occurred, give advice/guidance and offer
support and/or training as appropriate in accordance with the management interventions suggested under paragraph 4 of the Capability/Performance Procedure (Addressing issues prior to the use of the formal procedure).

(c) To give a formal written warning if there has been either a repeated minor breach in conduct or performance, or a first but more serious shortcoming in performance.

(d) To give a final written warning if there has been an insufficient response to previous warnings and performance is still unsatisfactory, or in the case of a first but sufficiently serious shortfall in performance.

(e) To give the employee notice of dismissal if, following a final written warning, performance remains unsatisfactory and the employee still fails to reach or maintain the prescribed standards.

(f) To dismiss the employee summarily without notice and without there having been any previous warnings in extreme cases of gross negligence. Case law limits the circumstances in which an employee can be dismissed for a first shortfall in performance, without any previous warnings.

The representative of the Director of Personnel and Staff Development will advise the manager on the reasonableness of the decision which should take into account all the circumstances of each case, any mitigating factors, the employee's position and record (including their length of service and any current warnings under the Procedure) and the relevance of principles established either by case law or by precedents within the University.

The Capability/Performance Procedure states that warnings will be disregarded for further purposes under the Procedure after six months (for a first warning) or twelve months (for a final warning), ‘unless there are circumstances which justify a longer period’. Where managers are considering setting a longer ‘life’ for a warning, this should be discussed with the employee and the reasons explained in the letter of confirmation.

The reasons for the decision should be recorded so that these can be set out in the notification letter.

Communicating the Decision

The representative of the Director of Personnel and Staff Development will draft the notification letter for the manager. In addition to advising the employee of the decision, the letters should indicate the factors taken into account and the reasons for the decision.

If a warning is issued, the employee should be told the length of time for which it will remain ‘valid’, the improvements required and the consequences if their performance does not improve to the required standard within this period.

They should also be advised of the right of appeal and of how they may exercise this right. The decision must be confirmed to the employee, in writing, within one week of the hearing.

See Appendix for a template/example letter confirming the outcome of a hearing.

Follow up

In cases of action short of dismissal, consideration should given to any additional support and monitoring which may be necessary to ensure that performance improves to the standard expected and that there is no re-occurrence.

The process of regular reviews (and keeping a record of these reviews) and ensuring that appropriate training and support is given, as set out in section 4 of this guide, should continued during the ‘life’ of the warning.

Before the end of the period, a further review should take place so that a decision can be made whether to treat the formal procedure as closed – because the employee’s performance has improved to the required standard (in which case they should be notified
in writing) – or whether the case should be referred for consideration under the formal procedure in a further formal hearing.

9 Record keeping

Managers should be aware that written communications may be disclosed in the event of an Employment Tribunal claim or a disclosure request under the Data Protection Act. For example, an email between the manager and Personnel Manager seeking advice on how to manage a situation could be disclosed, so care should be taken when such messages are written. Communications should be factual, objective and professionally worded.

Managers should retain copies of notes of discussions and communications sent to employees while ‘addressing issues prior to the use of the formal procedure’.

The manager conducting the hearing should retain any handwritten notes made during the hearing as these may be disclosed later. The Personnel Manager/Officer advising the manager will take a note of the hearing. This will not be a complete verbatim record. In certain cases, it may be necessary for these notes to be typed up and circulated to the employee and/or appeal panel. Any notes made by the Personnel Manager/Officer during the deliberation phase should also be retained as these may be disclosable in the event of legal action.

10 Appeals under the Capability/Performance Procedure

An employee has the right to appeal against a decision to issue a warning (both a ‘first’ and a ‘final’ warning) or to dismiss.

The right of appeal must be exercised within two weeks of receipt of the letter of confirmation of disciplinary action. The appeal, stating the grounds on which it is made, must be in writing addressed to the Director of Personnel and Staff Development.

The Director of Personnel and Staff Development will make arrangements for the appeal to be heard – ideally within four weeks of the appeal being lodged - by a panel comprising two senior managers who have had no previous involvement in the case. In the case of an appeal against a final warning or against dismissal, the panel will be drawn from members of the Senior Management Group from a different School/Service.

The appeal will generally be a review of the original decision rather than an re-hearing, so it will not normally be necessary for all the witnesses from the original disciplinary hearing to attend the appeal hearing and give their evidence again. Rather, the manager who conducted the hearing will be required to attend the appeal to explain the reasons for the decision they made and to answer questions, both from the panel and from the employee (and/or the person accompanying them).

Exceptionally, the appeal panel may consider that new evidence should be presented, in which case arrangements will be made for other witnesses to attend. The Director of Personnel and Staff Development (or designate) will make the appropriate arrangements.

The appeal panel may:
- uphold the action taken; or
- withdraw the action taken; or
- reduce the level of action taken.

They cannot impose a ‘higher’ or more ‘severe’ penalty.

The procedure for appeals is set out in Ordinance 26.

The decision of the Appeal Body is final within the procedures of the University, although in most cases of dismissal the (former) employee will have the right to make an application to an Employment Tribunal.

In the case of a dismissal the resultant vacant post must not be filled until the appeal has been determined.
Appendix: Template letters

Summary of outcome of discussion Addressing issues prior to the use of the Formal Procedure

Dear

I refer to our conversation on [date] when I expressed to you my concern that:

[give details of concerns, ie failure to meet target x, errors, complaints from customers etc]

We agreed that you would, by [date]:

[give details of agreed targets, actions, training to be attended etc].

We also agreed that we would meet again on [date] to review your progress against these targets. Please do not hesitate to speak to me at any time if you have any concerns that you may not be able to achieve these outcomes for any reason.

Notification of formal hearing under the Capability/Performance Procedure

Dear

Hearing under the Capability/Performance Procedure: [date]

I require your attendance at a hearing to be held under the University’s Capability/Performance Procedure (enclosed). The hearing will take place on [date] at [time] in [venue].

The purpose of the hearing is for you to respond to the following concerns:

- [detail concerns/shortfalls in performance]

I enclose copies of the documentary evidence which I will consider.

I have also arranged for your line manager [name] to attend as witnesses:

I will be advised by a representative of Personnel and Staff Development.

You are advised that the hearing may result in serious action being taken [(if appropriate) including the possibility of dismissal] and you are reminded of your right to be accompanied by a trade union representative or fellow worker.

You have the right to present your own documentary evidence and to bring your own witnesses. Please notify me no later than [date] to confirm your attendance and to advise if you will be accompanied and by whom and of any witnesses you will be bringing. You should note that it is your responsibility to contact these witnesses and arrange for their attendance. Any additional documentation you wish me to consider should also reach me by [date].

Yours sincerely

Notification of outcome of hearing under the Capability/Performance Procedure

Dear

Hearing under the Capability/Performance Procedure: [date]

I refer to the hearing which took place on [date]. The hearing was held under the University’s Capability/Performance Procedure. You were accompanied by [name of representative/coleague] and I was advised by [name of Personnel Manager/Officer].

The purpose of the hearing was for you to respond to the concerns detailed in my letter of [date], namely:

- [detail concerns/shortfalls in performance]

Having carefully considered the evidence which was presented and the responses which you gave, I have reached the following conclusions:
[detail conclusions and reasons]

[As appropriate]

In view of the seriousness of this issue, I have concluded that you should be given a formal warning/final written warning. This will remain valid for a period of 6 months/12 months [or longer period if there circumstances which justify a longer period: these must be explained in this letter]. If your performance improves to and is maintained at a satisfactory standard during this period, the warning will be disregarded for further purposes under the Capability/Performance Procedure. If your performance does not improve to and is maintained at a satisfactory standard during this period then further action under the Capability/Performance Procedure may be taken, including the possibility of dismissal.

[Detail any remedial action required of the employee, including any dates for review]

You have the right to appeal against this decision. To exercise this right, you should write to the Director of Personnel and Staff Development within two weeks of receiving this letter clearly stating the grounds of your appeal.

Yours sincerely