

<b>Committee</b>	HR&R		
<b>Date paper prepared</b>	30/06/2022	<b>Date of committee meeting</b>	14/09/2022
<b>Subject</b>	HR Policies and Procedures – Capability Policy and Procedure		
<b>Author</b>	Judith Fenton, HR&OD Lead		
<b>Action requested</b>	For approval		
<b>Purpose of the paper</b>	To share the policy for approval		
<b>Brief summary of the paper</b>	The paper shares our drafted Capability Policy and Procedure. The document has been developed in partnership with SMT, union colleagues, and key staff. It is designed to support the Objective Setting and Review Policy, and provide a tool for managers and staff to manage capability issues consistently and fairly. It applies to all employees.		
<b>Consultation</b>	SMG and LNCC		
<b>Resource implications</b>	None identified		
<b>Risk implications</b>	None		

<p><b>Link with strategy</b></p>	<p>N/A</p>
<p><b><u>Equality, Diversity and Inclusion</u></b></p>	<p>Summarise how any actual or potential (positive or negative) equality, diversity, and inclusion implications have been considered in the development of the paper. Please refer to the Equality, Diversity and Inclusiveness Policy for more information.</p>
<p><b>Island Community Impact</b></p>	<p>Summarise how any actual or potential (positive or negative) impacts on island communities have been considered in the development of the paper.</p>
<p><b>Paper status</b></p>	<p><input checked="" type="checkbox"/> <b>Open</b> – The paper may be circulated to non-members of the committee and published online without restriction.</p> <p><input type="checkbox"/> <b>Restricted</b> – The paper must not be circulated to non-members or published online until after the committee meeting.</p> <p><input type="checkbox"/> <b>Confidential</b> - The paper must not be circulated beyond the committee members and should not be published online. [Please note papers may still be subject to Freedom of Information requests – see below].</p>
<p><b><u>Freedom of information</u></b></p>	<p>Open</p> <p>If closed/ withheld, select date this will become 'open': Enter a date.</p>

## Capability Policy and Procedure

### 1. Purpose

- 1.1 Shetland UHI recognises that our staff are our most important asset. Shetland UHI understands that from time to time, employees may encounter situations or circumstances that impact upon their performance.
- 1.2 The purpose of this policy is to provide managers and employees with a clear framework for managing underperformance resulting from capability factors.

*Shetland UHI's Vision:*

***Shetland UHI will be an inspirational hub of innovation and learning designed to meet the needs of the people of Shetland, nationally and internationally.***

*Shetland UHI's Values:*

*We will achieve our Vision by:*

- ***Working together*** - *Fostering activity and interaction across the organisation and between staff and students.*
- ***Working for Shetland*** - *Addressing skills needs, supporting innovation and applied research for the Shetland economy as the university for Shetland, with the University for the Highlands and Islands (UHI).*
- ***Working sustainably*** - *Embedding sustainability in the curriculum and in our practice.*
- ***Working to become resilient*** - *Encouraging staff development and aspiration, exploring and achieving new income streams.*
- ***Working with partners*** - *Developing relationships with employers, schools, communities, SIC and relevant national and international institutions.*

### 2. Scope

- 2.1 This policy applies to all employees at Shetland UHI.
- 2.2 The policy and procedure cover all activities that form part of both an informal and formal capability process.
- 2.3 This policy does not apply to circumstances relating to wilful or intentional behaviours or conduct matters such as: persistent poor timekeeping; poor conduct; failure to abide by organisational values; failure to follow clear and reasonable instruction from management; intentional acts of deception; dishonesty. Usually, these situations will be investigated and managed via the Disciplinary Policy and Procedure.
- 2.4 It is not always clear what factors impact capability. In such cases, Shetland UHI will investigate the matter fully before deciding which route to take, and managers are encouraged to liaise with HR in these circumstances.

## 3. Policy

### Understanding Performance

3.1 Shetland UHI is committed to providing a learning and working environment which advances equality, diversity, and inclusion, where everyone is respected, valued and supported. To meet this commitment Shetland UHI will:

- Be fair and consistent
- Be non-discriminatory
- Conform to all statutory regulations and agreed best practice.

3.2 Performance can be negatively impacted by various factors. In situations where any under-performance identified is due to factors impacting capability, these may be addressed through this policy, initially on an informal basis.

3.3 Situations where under-performance can be linked to conduct will not usually be addressed via this policy.

### Understanding Capability

3.4 Capability refers to an employee's knowledge, skill, and or ability to do their job.

3.5 Incapability refers to situations where a potential lack of knowledge, skill or ability hinders or prevent and employee from achieving the standards required to perform to the required standards or meet the reasonable expectations of their role.

3.6 Shetland UHI recognises that performance can be impacted by factors out with an employee's control – such as a change in personal circumstances, personal stresses or a significant life event - and is committed to maintaining a positive culture where all employees reach their potential and are afforded opportunities and support to do so successfully.

3.7 Health and Wellbeing can also impact our performance. Matters relating to concerns over an employee's health and wellbeing should be raised with HR in the first instance and should not be addressed via a capability process until all parties are satisfied that so doing will not have a significant detriment to the employee's health and wellbeing.

## 4. Process

4.1 As far as possible, employees will be supported to improve their performance via an informal process.

4.2 The process to follow is in three stages, at each stage a Performance improvement Plan is developed with the employee. A draft model of this is available in Appendix 1.

### Three Step Process

#### 4.3 **Step One: Informal Support**

The purpose of this informal stage is for the line manager to make the employee aware of issues that have arisen in respect of their performance, establish if there is a capability issue and discuss ways in which improvements can be made. A discussion to explore if there is any assistance required to facilitate the process should also be had.

Support options that may be considered (and this is not an exhaustive list):

- Training
- Mentoring
- Extra support and supervision
- A temporary or permanent adjustment to duties
- A temporary or permanent adjustment to hours
- Referral to occupational health.

The employee and line manager then complete a performance improvement plan outlining dates for when the improvement should be achieved and arrange a time to follow up. Any timescale should take in to account any support options identified to ensure the improvement timescale is realistic. A note of the discussion should be appended to the improvement plan.

#### 4.4 Review

The employee and line manager meet to review the performance improvement plan. If the performance improvement has been achieved, the document is signed off and the matter is closed.

If the performance improvement has been partially achieved, and the view is that some more time would enable the employee to achieve the requirements, the improvement plan can be amended, and the review meeting reconvened at a later date.

Where minimal or no discernible improvement has been achieved, the situation will usually progress into a formal stage. The review will be concluded, and the employee advised that they will be invited to a formal capability meeting.

Where the improvements have not been achieved and there is an indication that this is a wilful or deliberate poor conduct or behaviour of the employee the line manager will advise the employee whether this may still be viewed as a capability matter or whether the matter should be addressed via existing disciplinary policies and procedures. In these situations, the review meeting will be concluded, and the employee advised that the line manager will consider options and follow up in writing with the employee.

#### 4.5 **Step Two: Formal Capability Meeting**

Where either the informal meetings have proved unsuccessful in improving performance or, where appropriate, following disciplinary, grievance or complaint procedures, the performance of the employee continues to cause concern and falls below the level required for the post, a formal meeting should be arranged.

The line manager should write to the employee, advising him/her of the meeting giving 7 calendar days' notice and confirming the formal capability procedure will commence. The employee should be informed of their right to be accompanied or represented by a trade union representative or work colleague. They should also be provided with details of previous informal actions and outcomes. The manager will advise Human Resources in all instances where formal capability procedures are introduced. The purpose of the meeting is to:

- Confirm previous informal discussions relating to a shortfall in performance.
- Outline the support that has already been provided

- Clearly identify how/why requirements for improvements discussed at the informal stage have not been met and provide clear examples of this.
- Confirm the level of performance that is expected and the impact of non-performance on the service.
- Reassure the employee that this is a supportive process and that their cooperation is key to resolving the problem.
- Give the employee the opportunity to respond and acknowledge the problems identified
- Discuss any underlying causes for the poor job performance
- A Performance Improvement Plan (example at Appendix 1) should be agreed detailing the areas for improvement, the required standards and the method of achieving and assisting improvement.
- Agree a programme of monitoring to achieve the desired improvement.
- A reasonable timescale should be set for a formal review (no longer than 3 months)
- Ensure the employee understands the possible consequences of not achieving the standards.

A note of the meeting should be appended to the Performance Improvement Plan.

#### 4.6 Review

The manager will conduct the formal review meeting with the employee. The employee has the right to be accompanied by a representative of a recognised Trade Union or work colleague. A representative from Human Resources may also be invited to attend the meeting. At this meeting previous targets and recent work performance are reviewed and discussed. The details of the formal review meeting along with the outcome will be confirmed in writing to the employee within 7 calendar days of the meeting.

##### Improvement in Performance:

Following a review of the improvement plan, if the desired improvement has been achieved the employee should be advised that a satisfactory standard of performance has been achieved and is expected to be maintained. To ensure a satisfactory standard of performance is maintained, there will be a further period of monitoring of 3 months or other longer agreed period.

If performance is not maintained during the monitoring period, the employee will be notified of this in writing and a further formal review meeting will be held.

If a satisfactory standard of performance is maintained during this monitoring period, the employee will be notified in writing and no further action will be taken. In this case, the records in relation to the Step 1 and Step 2 capability meetings will be destroyed.

##### Improvement but not to an acceptable level/standard:

If some of the areas identified have improved, but others have not, consideration will be given to the probability of further improvement being achieved through extending the timescale or adjusting the support.

##### No Improvement in Performance:

If the review of the action plan does not result in the required standards of performance being achieved within agreed timescales, the employee should be advised clearly of the areas of under-performance.

Additional or alternative support mechanisms should be considered. The employee must be given the opportunity to answer points raised and explain any difficulties they may have.

The employee should be advised of the seriousness of the situation and of the potential implications of continued poor performance. The manager conducting the Stage 2 formal Review Meeting may:

- Extend the review period for a further agreed timescale, or
- Refer to a capability hearing, conducted by a more senior manager

#### 4.7 Step Three: Capability Hearing

In all circumstances, employees whose employment may be terminated in respect of Performance Related Capability will be referred to a formal capability hearing, and notified of termination as a potential outcome, ahead of the hearing. The hearing should be convened and chaired by the relevant Senior Manager and a representative from Human Resources should be in attendance. The employee should be given 7 calendar days written notice of the date of the hearing and informed of their right to provide supporting papers and to be accompanied by a trade union representative or work colleague.

The manager progressing action previously in relation to the employee's performance will present management's case (i.e. this will be the manager who has met with the employee throughout the process). The presentation will include providing evidence of steps taken to assist the employee and confirmation of agreements reached, standards set and evidence of where and how the required standard was not achieved.

The employee or their representative may then present their case. Questions may be asked as appropriate.

On consideration of all the facts the Chairperson should, where possible, communicate their decision in person to the employee verbally and confirm this in writing within 7 calendar days.

#### 4.8 Outcomes of Capability Hearing

Following a capability hearing, there are four possible outcomes as described below:

1. Improvements have been made or there are no capability issues  
In this circumstance, the employee will be notified and all documentation relating to the capability process destroyed.
2. Further information is required / Additional time and support for improvement should be granted  
In this circumstance, the employee and line manager will meet to review any performance improvement plans as per Step 2 of the formal process.
3. Redeployment should be sought  
In this circumstance, the employee and line manager will meet to discuss potential options for redeployment. Where no immediate options are identified, the employee will be required to continue within their current role for a period of up to three months, with an active capability

process in place. At the end of the three-month period, if no alternative employment opportunities have been established and there is no discernible improvement, a Capability Hearing may be convened, as per Step 2 of the formal process.

#### 4. Dismissal

If the outcome is dismissal, on the basis that it is reasonable to conclude, on the strength of the evidence presented and available, that the employee will not achieve the required job standards this will be confirmed in writing to the employee. The letter will state:

- The reason for termination
- The notice period in place and any arrangements relating to working during that notice period
- Details relating to the final pay due to the employee, including arrangements for accrued but unused annual leave
- The arrangements in place should the employee wish to appeal against the decision

#### 4.9 The Appeal

The employee has the right to appeal against any decision to dismiss on capability grounds. The capability hearing chair will state to whom this appeal should be addressed to.

Normally, appeals will be received by manager more senior to the Capability Hearing chairperson, and not previously involved in the case. In cases where the appeal is lodged by a member of the senior management team, the appeal will be heard by the Human Resources and Remuneration Committee. Appeals should be submitted in writing to the named person within 7 calendar days of receipt of the Capability Hearing outcome letter.

#### 4.10 The Appeal Hearing

A panel will be convened within 14 calendar days of the receipt of an appeal letter. The panel will consist of the appeal chairperson, and a member of HR. The Capability Hearing chairperson will be present to give an account of the rationale and evidence base for the decision made. The employee has the right to be accompanied by a trade union representative or work colleague.

The employee will have the opportunity to present their grounds for appeal. Where new or significant evidence is presented the appeal hearing may be paused and reconvened to allow appropriate examination of the evidence and reconvened at a later date.

The appeal chairperson will communicate the outcome of the appeal hearing in writing to the employee within 7 calendar days of the appeal hearing date. The decision of the appeal hearing chairperson is final and there is no recourse to a further appeal.

## 5. Responsibilities

- 5.1 Shetland UHI is responsible for ensuring that this policy is fully implemented throughout Shetland UHI and is responsible for reviewing and updating this policy.
- 5.2 All Managers and Team Leaders have a duty to ensure that Shetland UHI's policies including this policy are implemented within their sphere of activities and responsibility.



5.3 All Staff are responsible for adhering to this policy

## 6. Retention of Documentation

- 6.1 Any documentation relating to performance improvement plans will be retained for the duration of any active capability process and will thereafter be destroyed
- 6.2 Documentation relating to capability hearings where the outcome is dismissal will be held for a period of 12 months from the date of termination.

## 7. Linked Policies

- Equality, Diversity and Inclusion Policy
- Dignity at Work Policy
- Disciplinary Policy and Procedure
- Probationary Policy and Procedure

## 8. Relevant Legislation

- Employment Rights Act 1996 as amended
- Employment Rights Act 2004
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 1999
- Data Protection Act 1998 as amended;
- Human Rights Act 1998
- Health and Safety at Work etc. Act 1974;
- Management of Health and Safety at Work Regulations 1999;
- Equality Act 2010

Reviewed	By	Approved
March 2022	HR and OD Lead	Yes
June 2022	LNCC	Yes
September 2022	HR&R	

**APPENDIX 1: Performance Action Plan**

This document gives managers an idea about the information that a performance action plan should include. Please note that there should be detailed and accurate records of each informal and formal meeting which should be kept as appendices to this plan.

<b>Name</b>				
<b>Post</b>				
<b>Manager</b>				
<b>Date</b>				
<b>Review Meeting Date</b>				
<b>Policy Stage</b>				
<b>Issues of Concern</b>	<b>Performance Target</b>	<b>Support employee requires to achieve target</b>	<b>Timescale to achieve target by</b>	<b>Review Meeting Outcome/s</b>

Signed ..... (Manager)

Date .....

Signed ..... (Employee)

Date .....