

1. Scope and Policy Objectives

- 1.1 This policy applies to all groups of Aberystwyth University staff who have successfully completed their probation period. It establishes guidelines for managers and staff in relation to the management of under-performance.
- 1.2 This policy is designed to ensure that cases of under-performance are dealt with consistently and fairly, with the prime objective of improving an individual's performance to the required level.
- 1.3 Aberystwyth University has a responsibility for setting realistic and measurable standards of performance, for explaining these standards carefully to members of staff and for supporting staff to achieve the standards set.
- 1.4 All new members of staff will have their job explained carefully to them on arrival at Aberystwyth University, will be given a copy of, or referred to, any written guidance that exists in relation to their area of work and will be given appropriate training and support to become familiar with it.
- 1.5 Staff must also be made aware of the standards expected of them and where expectations change and evolve over time; managers have a responsibility to inform staff of these changes.
- 1.6 All members of staff have a contractual responsibility to perform their duties to an acceptable standard and they should be given all reasonable support and encouragement to do so.

2. Informal Stage 1

- 2.1 When there is evidence that an individual is not performing at an acceptable level, the manager/supervisor should investigate the circumstances without delay and endeavour to ascertain the reasons for the unsatisfactory performance. If, following this examination, the manager/supervisor/ considers that the individual's performance is unacceptable in some material respect an informal discussion with the member of staff will be arranged. When discussing under-performance managers must be specific about their concerns and must demonstrate evidence and/or give examples to support their concerns. The manager/supervisor should have notes with dates and examples of their concerns in order that the employee can review and understand the issues.
- 2.2 The manager/supervisor will provide an opportunity to invite a Trade Union representative or work colleague to support the employee. If this offer is accepted, the meeting can be rescheduled for a date up to 3 working days. At this meeting the manager will outline the reason for the meeting.
- 2.2.1 Make clear the areas in which the individual's performance is below expectations (explaining the grounds / evidence for this view) with the aim of identifying any problems or reasons for the under-performance which could be resolved. Solutions to the problem could include additional training, providing a mentor, coaching or some other kind of ongoing support to the individual.
- 2.2.2 Give the individual the opportunity to explain their under-performance and to raise any concerns they may have about the job or the support and guidance they have been provided to do it.

2.2.3 Always consider the provisions of the Equality Act 2010, in particular the obligation to make reasonable adjustments when dealing with disabled members of staff (see Aberystwyth University Equality Policy <https://www.aber.ac.uk/en/equality/equality-policy/>).

2.2.4 Ensure that the member of staff is aware of the level of performance / productivity required in relation to each element of the duties about which there is a concern.

2.2.5 Solutions to the problem could include additional training, providing a mentor, receiving coaching or other additional support aspects to the individual.

2.2.6 If the employee mentions health issues or the manager/supervisor believes they could be a factor, a referral to Occupational Health should be made.

2.2.7 Set a reasonable time frame within which improvement is expected and arrange a further meeting at the end of this time to review the situation. When establishing "reasonable timescales" for improvement, managers must consider the complexity of the tasks involved in relation to the qualifications and experience of the individual.

2.3 The content and outcome of this meeting will be confirmed by the manager/supervisor in writing to the individual, including the type of improvement required, any additional support or training that will be provided, any other agreed actions and the timescale for improvement and review. This record is for departmental purposes only.

2.4 The manager/supervisor will arrange for a follow up meeting with the employee to review the actions implemented in 2.2.5.

3. Formal Stages

3.1 Stage 2

3.1.1 If there is continued unsatisfactory performance or where a first instance of unsatisfactory performance is sufficiently serious to warrant formal consideration (e.g. where health & safety is at risk or significant costs or other risks are involved), the member of staff should be invited to a formal interview to discuss the matter. Where requested by the manager /supervisor, a representative from HR will attend the meeting.

3.1.2 A member of staff will receive 5 working days advanced notice in writing of any formal interview arranged under this policy (unless the employee agrees to less in writing). At all such interviews the member of staff has the right to be accompanied by a work colleague or trade union representative. Where witnesses are to be called by the manager/supervisor or the individual, prior notice of this should be given.

3.1.3 Where an individual's representative is unable to attend the meeting at the notified time, the meeting will be postponed and rescheduled to an alternative time within 5 working days.

3.1.4 At this meeting the member of staff will be reminded of the earlier informal discussions (where these have happened) and the steps taken to support an improvement in their performance. They will be told, as precisely as possible, the reasons for the manager/supervisor's continued concerns about their performance. The individual will then be given the opportunity to explain their unsatisfactory performance. Having heard any explanations offered by the member of staff, the manager/supervisor has the following options available to them:

- no further action;
- training and support;
- formal caution;
- or a mixture of the options.

This will be confirmed in writing to the individual.

3.1.5 In the event of a formal caution being applied it will be placed on the individual's HR file. The formal caution will be disregarded after a period of 12 months if performance has improved to the standard required.

3.1.6 A reasonable time period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.

3.1.7 The employee will have the right of appeal against a formal caution. Please see Section 5 for details of the appeals process.

3.2 Stage 3

3.2.1 If there has been insufficient improvement in performance within the timescale following the formal caution a further formal interview will be held with the individual. Where requested by the manager / supervisor, a representative from HR will attend this meeting.

3.2.2 A member of staff will receive 5 working days advanced notice in writing of any formal interview arranged under this policy (unless the employee agrees to less in writing). At all such interviews the member of staff has the right to be accompanied by a work colleague or trade union representative. Where witnesses are to be called by the manager/supervisor or the individual, prior notice of this should be given.

3.2.3 Where an individual's representative is unable to attend the meeting at the notified time, the meeting will be postponed and rescheduled to an alternative time within 5 working days.

3.2.4 At this meeting the manager/supervisor will review the history of the case, including the steps that have been taken to support the individual to achieve the required level of performance.

3.2.5 If, having heard the explanation offered by the member of staff, the manager/supervisor remains concerned a FINAL CAUTION will be issued for unsatisfactory performance. This will be confirmed in writing. The member of staff will also be informed that their employment will be at risk if satisfactory performance levels cannot be achieved (within the time scale indicated by the manager/supervisor) and subsequently maintained.

3.2.6 This caution will be placed on the individual's HR file and will be disregarded after a period of 12 months if performance has improved to the standard required.

3.2.7 Further consideration should be given to any additional training or support that could reasonably be provided to the member of staff to enable them to reach the required standard of performance.

3.2.8 A review period will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.

3.2.9 The employee will have the right of appeal against a final caution. Please see Section 5 for details of the appeals process.

3.3 Stage 4

3.3.1 If there has been insufficient improvement in performance within the timescale following the final caution, the manager will inform the HR Department that the employee's performance has not met the level of improvement required and provide an outline of the rationale for this conclusion. The employee will then receive confirmation in writing from the HR Department that the matter will be referred to a formal capability hearing (see Appendix 1) to consider the matter.

The capability panel will consist of:-

1. Faculty PVC
2. A Head of Professional Services Department
3. A HR Manager (in an advisory capacity)

Panel members will not be from the same department as the appellant or have had any earlier involvement with this or any other case involving the appellant.

A representative from the HR department must attend any meeting that takes place with the employee under this stage of the procedure.

3.3.2 A member of staff will receive 5 working days advanced notice in writing of the formal capability hearing arranged under this policy (unless the employee agrees to less in writing). The employee has the right to be accompanied by a work colleague or trade union representative at this hearing. Where witnesses are to be called by the manager/supervisor or the individual, prior notice of this should be given.

3.3.3 Where an individual's representative is unable to attend the capability hearing at the notified time, the meeting will be postponed and rescheduled to an alternative date and time within 5 working days.

4. Ill-health / Poor Attendance

4.1 An individual's capability to carry out their role to the expected standard may also be affected by their health and their attendance record. Managers/supervisors must bear in mind the provisions of the Equality Act 2010, in particular the obligation to make reasonable adjustments when dealing with disabled members of staff (see Aberystwyth University Equality Scheme).

4.2 Please note, the early stages for managing repeated short-term absence is set out in Aberystwyth University's Managing Sickness Absence Policy. Where the second Sickness Absence Review meeting does not produce the required improvement in attendance, the employee will then be managed through this policy commencing at Stage 3 of the procedure.

4.3 A Stage 3 formal meeting will be held at which any explanations offered by the individual will be discussed. A FINAL CAUTION may be given for unsatisfactory attendance if the manager/supervisor remains concerned and this will be confirmed in writing. The member of staff will be informed that their employment may be at risk if satisfactory attendance levels are not achieved and maintained.

5. Right of Appeal

5.1 An individual has the right to appeal against any formal action taken against them in line with this policy and must do so by writing to the Director of Human Resources, within 10 working days of the date of receipt of written confirmation of the action taken against them, stating their grounds for the appeal. Appeals against a formal caution can

only be submitted on procedural grounds or factual inaccuracies in the information upon which a decision has been made.

5.2 The procedure for dealing with appeals is detailed in Appendix 2: The opportunity to appeal against a capability decision is essential to natural justice, and appeals may be raised by employees on any number of grounds. The decision to appeal must be indicated in writing within the time limit above. The employee should state the ground(s) for the appeal either at that time or at the latest within five working days of submitting their notification of appeal.

Grounds for appeal may include:

- The employee considers that the procedures followed by the person(s) conducting the hearing were in some way defective.
- The employee considers the penalty imposed to be inappropriate or inconsistent with previous practice.
- The employee wishes to introduce new evidence that has subsequently come to light and which, had it been known at the time of the hearing, could have affected the decision.
- The employee believes the penalty is too harsh.

5.3 This policy does not remove the right of employees to invoke the relevant Grievance procedure in appropriate circumstances. However, once formal proceedings have been instigated under this procedure, any formal complaint or grievance against the University and/or named individuals will be investigated simultaneously / considered alongside.

5.4 If an employee is successful in appealing against dismissal, they will be paid in line with their contract of employment in respect of the period from dismissal to reinstatement as if the dismissal had never taken place.

6.Responsibilities

6.1 **Managers** are responsible for:

6.1.1 setting standards of performance, and ensuring that these are communicated and understood. Standards of work performance should be outlined at the start of employment and then reinforced through the induction process and training, in ECS or reviews and for any changes to the role;

6.1.2 providing appropriate support and assistance to help staff reach and maintain the required standard of work;

6.1.3 highlighting performance issues and taking appropriate action at the earliest possible opportunity – as per the informal stage of this policy;

6.1.4 ensuring that matters relating to an individual's work performance are dealt with sensitively whilst maintaining confidentiality and dignity;

6.1.5 Applying the policy in a consistent and diligent manner.

6.2 **HR** is responsible for:

6.2.1 ensuring that managers (Faculty PVC, Head of Professional Services, line managers and supervisors) receive appropriate training and professional support for dealing with performance and capability related issues;

6.2.2 monitoring compliance with the capability procedure across the University;

6.2.3 helping provide consistency in the application of the policy;

6.2.4 attending meetings as required and keeping formal records under stages 2 – 4 and at appeals.

6.3 **Employees** are responsible for:

6.3.1 ensuring that they are aware of their responsibilities under the policy;

6.3.2 performing their duties to a satisfactory level as set out by management in 4.1.1;

6.3.3 bringing to the attention of their line-managers any work related problems or personal circumstances that may affect their performance at work;

6.3.4 understanding that if their work performance falls below an acceptable level, managers will be obliged to address this;

6.3.5 working together with their line-managers to identify how their performance could improve;

6.3.6 responding to corrective measures that are identified in a timely and diligent manner.

7. **Policy Review**

7.1 Human Resources will co-ordinate a review of this policy in order to maintain compliance with legislation and good practice. The review will be undertaken in liaison with the recognised trade unions and any proposed amendments will be submitted to the appropriate relevant committee, University Executive and Council if required.

8. **Equality Impact Assessment**

8.1 The University is committed to embedding the Equality Scheme into its policies, procedures and practices. This policy has been equality impact assessed in accordance with this scheme. Managing underperformance

9. **Welsh Language – Employee Rights**

In accordance with the Welsh Language Standards that came into effect on 1 April 2018 employees have the right to use the Welsh language to

(a) make a complaint

(b) respond to a complaint or allegation

and employees also have the right to use the Welsh language in meetings where they are the subject of

(c) complaints and allegations (or have made the complaint)

(d) disciplinary proceedings

(e) effective contribution scheme discussions

(f) individual consultation meetings

A simultaneous translation service from Welsh to English will be provided at the meeting when the meeting cannot be conducted solely in Welsh.

The university has, in conjunction with its recognised trade unions, incorporated the above requirements into all relevant HR policy and procedural documents.

Appendix 1

Procedure for formal capability hearings

1. Introduction

The chair of the capability panel will:-

- a) Introduce those present to the employee and explain the purpose of the formal hearing; namely, to consider the employee's performance under Stage 4 of the capability policy;
- b) Confirm that the employee and his/her representative have received copies of documents or written statements which have been produced in support of the case against the employee;
- c) Explain how the hearing will be conducted, and confirm that participants will be allowed to present their evidence in Welsh or English without interruption;
- d) The hearing will be recorded. A copy of the recording will be kept but will not be transcribed as a matter of course. Where an appeal is subsequently received, the recording will only be transcribed where all parties agree that it is necessary to assist the appeal process. Where agreement is not reached, a copy of the recording will be issued to the employee and the panel members.

2. Management presentation of the case

The chair of the panel will state the performance issues outlined in the letter to the employee. The manager will then be asked to present the evidence, summarise the history of the case, including the steps that have been taken to support the individual to achieve the required standard of performance. Witnesses may be called if required. The employee, the employee's representative, and the panel members may question any witnesses called. Each witness will be called to give evidence and will withdraw after giving evidence, but may be recalled at the request of the person conducting the hearing.

3. Employee's reply

The employee or his/her representative will be given an opportunity to respond to the case put forward in Welsh or English. The employee or his/her representative will be given an opportunity to ask questions, present evidence, and call witnesses in turn. The panel members may question the employee and/or any witnesses called. Each witness will withdraw after giving evidence, but may be recalled at the request of the Chair or with his/her consent.

4. Adjournments

The Chair may adjourn the proceedings at any stage if this appears necessary or appropriate or is requested by any of the other parties. Adjournments may also be called by the Chair to receive a legal position from HR on any legal matters raised during the course of the hearing. If adjourning for the purpose of enabling further information to be obtained, he/she will specify the nature of the information required. Any adjournment will normally be for a stated period.

5 Summing up

After general questioning and discussion, the Chair will ask the manager presenting the case and the employee or his/her representative to give a short summary of the key points of their case. The employee or his/her representative will be allowed to conclude the summing up in Welsh or English. No new evidence will be introduced at this stage.

6 Adjournment and decision

The Chair will then close the hearing to enable the panel to consider the evidence and make a determination. The manager and the employee together with his/her representative, will withdraw.

The panel will then make a decision to either dismiss the member of staff on the grounds of capability or to extend the final caution to allow further time for improvement and maintenance of any improvement. The option of allowing further time for improvement may only be considered if there is evidence to persuade the panel that further time is likely to lead to the required improvement in performance.

The panel will confirm their decision and the reasons for it in writing to the individual within 5 working days. Written confirmation will be sent by agreement with the employee in person, by post, internal mail or by email with a read receipt requested. The employee will have the right of appeal against their dismissal or the extension of a final caution. Please see Section 5 of the Capability Policy for details of the appeals process.

Appendix 2

Procedure for the hearing of appeals

The following arrangements will apply:

1. Appeals against a formal caution will be heard by a member of the University Executive who will chair the panel and a Faculty PVC or Head of Professional Services Department in the case of business support staff. Appeal panel members will not be from the same department as the appellant or have had any earlier involvement with this or any other case involving the appellant.

2. Appeals against dismissal will be heard by three persons drawn from a panel appointed by the Director of Human Resources in conjunction with the University Secretary from the list below:-

- VC / Pro VC
- Faculty PVC or Head of Professional Services Department
- Lay member of Council
- Deputy or Director of Human Resources (in an advisory capacity)

The Vice-Chancellor or a Pro Vice-Chancellor will Chair the hearing sitting with either a Faculty PVC or Head of Professional Services Department and a lay member of Council. None of those hearing the appeal will be from the same department as the appellant or have had any earlier involvement with this or any other case involving the appellant.

3. The appeal hearing shall normally be convened within 7 working days. Human Resources will be responsible for making the arrangements for the hearing of the appeal and a representative from Human Resources will be present at the hearing to advise on procedure and to provide administrative support. The HR representative will not have been involved in the hearing.

4. If, for good cause, the employee or the Chair of the original hearing is unable to attend the appeal hearing, it will be rescheduled to a date normally within 10 working days, or some other date mutually agreed, of the original appeal hearing of which he/she and his/her representative (if any) will be informed without delay.

5. The employee will be invited to the appeal meeting in writing by HR. The letter will include the nature of the reasons for appeal that are to be considered, provided with any documentation relevant to the issue and outline the individual's rights under the procedure - including the right to be accompanied by a recognised Trade Union (TU) representative or a work colleague. The employee may use Welsh in the appeal hearing and, if necessary, a simultaneous translation service will be provided to facilitate this. The employee will normally be given 5 working days advance notice of the date of the meeting which should allow sufficient time to arrange to be represented at the hearing and to consult that person before the appeal hearing is held.

6. Where the facts on which the original decision was based are not in dispute, the appeal panel will base their considerations on the evidence provided at the hearing. The only additional material that can be introduced is new evidence that has subsequently come to light and which, had it been known at the time of the hearing, could have affected the decision. The Chair of the appeal panel will agree to consider additional information only if evidence has been provided that this additional information could not have been made available at the time of the hearing. This additional material can be provided by the employee or his/her representative.

7. The employee will be given the opportunity in a meeting with the appeals panel to outline their reasons for appeal in full and to provide their evidence in Welsh or English.

The chair of the hearing (or their depute) will be invited to present the rationale for their decision to issue a caution or dismiss the employee.

8. Once the cases have been presented, the chair of the appeal hearing will adjourn the meeting to enable the panel to make a determination.

9. The panel will confirm their decision and the reasons for it in writing to the individual within 5 working days. Written confirmation will be sent by agreement with the employee in person, by post, internal mail or by email with a read receipt requested.