**Capability**

**Policy and Procedure**

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1. Policy

* 1. This policy and procedure identifies how issues of capability should be managed for Queen Mary University of London (QMUL) employees. The policy is designed to support, encourage and promote capability in a transparent, fair and responsible manner.
	2. Capability covers the employee’s *ability* to do the job and unlike misconduct does not depend on any “fault” on the part of the employee. If there are issues with an employee’s *ability* to do the job then this policy should be used. Where potential incapability is caused by ill-health then the Attendance Policy and Procedure should be used.
	3. QMUL will ensure that the policy and the procedures are carried out in a non-discriminatory manner, taking account of individual circumstances and respecting confidentiality. The policy will be implemented in accordance with the principles of natural justice and QMUL’s statements on Equality and Diversity, Health and Safety and other relevant policies and legislation in force at the time.
	4. Line managers are responsible for managing capability issues on a day to day basis and should be competent in managing them in an effective and sensitive way, taking advice from Human Resources (HR) as necessary. Minor issues will normally be dealt with informally, with HR consulted on formal complaints.

2. Scope

2.1 This covers all employees who are employed by QMUL who have successfully completed their relevant probationary period, whether working full time or part-time, or on fixed term or permanent contracts. Any capability issues which arise during an employee’s probationary period should be addressed through the separate Probation Policy.

2.2 Records kept in the course of QMUL’s performance management schemes may be used to provide background and evidence for issues raised under this policy with the exception of QMPAS2 which is explicit that it will not be linked to other procedures.

3. General Principles

3.1 The principles of natural justice underpin this Capability Policy. All those involved in capability action must act in good faith.

3.2 Where possible, any concerns about employees’ ability to carry out their duties should be dealt with as early as possible and informally.

3.3 QMUL’s capability policy is primarily to help, encourage and provide support for those employees whose ability to carry out their job raises concerns.

3.4 Employees have the right to be accompanied by a trade union representative or work colleague at all formal stages of the procedure including investigation meetings.

* 1. Employees will have the right to appeal at each formal sanction.

3.6 QMUL aims to ensure that:

* The focus is on early resolution by taking informal action to resolve problems as soon as possible
* Informal action is regarded as good management practice, not as a procedure in itself
* There is consistent and fair treatment of all employees
* The capability process resolves issues promptly; whilst each case will be managed based on its own merits, depending on the objectives to be met, the process should normally be completed within a clearly-defined timescale (see 7.1)
* Managers take responsibility for clarifying standards and dealing with any areas of concern as they arise, taking into account the full scope of the job.

3.7 Stage 1 of the procedure will be managed by the line manager. Stage 2 should be heard by another manager independent of the people and issues concerned and senior to those previously involved. Stage 3 will be heard by a panel of three managers independent of the people and issues concerned and senior to those previously involved.

4. Responsibilities

4.1 In relation to Capability line managers are responsible for:

* Advising of general standards, explaining those contained in policy, procedures, or job descriptions and/or setting specific standards and objectives bearing in mind the full scope of the job. (See appendix 1) Providing all reasonable adjustments or support agreed with the employee
* Dealing with both informal and stage 1 capability matters including any improvement plans and referral to subsequent stages if necessary.
* Determining, with HR advice as necessary, any actions required
* Ensuring that employees are informed that they may be subject to formal capability processes and of the specific concerns to be addressed
* Providing **10 working days’** notice of a hearing if it is decided to proceed to the formal capability procedure. The letter informing the employee to include
	+ The nature of the concern(s) the likely consequence if objectives are not met within a suitable time-scale.
	+ The date, time and venue of the hearing.
	+ The right to be accompanied
	+ The relevant evidence.

4.2 Employees are responsible for:

* attending all meetings and hearings as required
* exercising their statutory rights to secure a representative who is a Trade Union representative or work colleague if they wish to be accompanied at formal meetings.

4.3 The chosen representative or companion may:

* take notes
* confer with the employee
* address the hearing
* respond on behalf of the employee.

The chosen representative or companion may not:

* Answer questions on behalf of the employee
* Address the hearing if the employee indicates that he or she does not wish the companion to do so.

4.4 Human Resources are responsible for:

* Briefing and advising managers on the implementation of these policies and procedures
* Ensuring that all appropriate documentation is provided to the employee
* Ensuring panels are convened as necessary and arranging the members to sit on them
* Attending panels to provide advice and guidance
* providing impartial advice to managers throughout the proceedings
* Keeping a record of meetings.

5. Informal Action

5.1 The general aim of this policy is to seek early resolution to problems in a timely manner in order to avoid formal action where appropriate. Therefore, where there are ‘areas of concern’, these are usually best dealt with informally which is often effective in achieving improvements. Managers should raise matters which affect capability in good time and without unreasonable delay. This may range from having a two-way conversation to providing additional support such as mediation, extra resources, mentoring, training and/or coaching where necessary. Informal action should be explored where possible as an option to resolving the matter before initiating formal action. The employee must always have the right to state their side of any case and for it to be viewed seriously on its merits and the line manager should take it into consideration when assessing concerns.

5.2 The employee does not usually have the right to be accompanied to informal meetings and HR will not be present. If required, advice should be sought from HR.

5.3 The employee will be invited to a private, informal discussion with their manager as early as possible and as part of normal day to day management. The informal discussion should raise and discuss:

* whether expectations are reasonable
* any concerns about the employee’s ability to carry out the job to the standard expected
* the possible causes and whether any reasonable adjustments are required
* agreeing an improvement plan including SMART objectives, dates for monitoring and review discussions during the informal process. The agreed plan should allow reasonable time for the employee to meet standards, taking into account all aspects of the post and as necessary the effect on students and colleagues.
* the implications of not meeting objectives within the agreed timescales, e.g. progressing to formal processes

Criticism should be constructive, with the emphasis on finding ways for the employee to improve and for the improvement to be sustained. This could include providing staff development, training, mentoring and coaching.

5.4 The manager should confirm the outcome of the discussion in writing within **10 working** **days.** The outcome will be documented and kept under confidential cover for the duration of the required improvements and may be used as supporting evidence should the matter proceed formally. These notes should be agreed with the employee. As part of an informal process the notes will not be kept on the employee’s personnel file.

5.5 Where an employee contests the expectations of their manager, or if they do not agree to the new objectives and targets (for example, where they believe the requested targets are not achievable or relate to tasks not relevant to the role), then this will be recorded in the meeting notes.

5.6 The manager should meet the employee regularly during the agreed review period to monitor progress in line with the timescales agreed.

5.7 If during the meeting it becomes apparent there is a need to review the employee’s workload and/or job description this should be discussed.

5.8 At the end of the specified period the manager should:

* Examine information gathered during the regular review meetings
* Consider whether the employee has met the objectives
* Assess the support and training the employee has achieved

5.9 The manager will write to the employee to confirm whether:

* The employee has met the objectives and no further action will be taken
* There has been some improvement but the objectives have still not been met. In this case, the review period may be extended and any additional support identified
* The objectives have not been met and there is little chance that they would be met if the plan were extended. The matter will be referred to Stage 1 of the formal procedure.

5.10 The line manager should review whether any adjustment or support has been provided in a timely manner. If not, then an extension to the time for the improvement plan should be agreed.

6. Formal Procedures

6.1 This formal procedure only applies to capability issues.

6.2 All stages of this procedure apply and provide an opportunity for:

* Encouragement, support and assistance
* A clear structured path for improvement
* Discussion and consideration of all relevant factors
* A commitment to work together to improve performance.

6.3 The formal procedure comprises;

**Stage 1** – formal meeting with improvement plan and review.

**Stage 2** – formal meeting with improvement plan and review.

**Stage 3** – formal meeting with optional review as part of improvement plan or changes to the employee’s post, job description or contract or, if no other option is available, dismissal.

6.4 All panels, including appeal, will consist of three managers who should be independent of the people and issues concerned. The Chair of the Panel should be senior to those previously involved. Where practicable all panel members should be senior to those previously involved. At least one should come from the same Faculty/Directorate as the employee.

 **Stage 1 Formal Meeting**

6.5 The employee will be invited to attend a formal meeting, confirmed in writing. (See 4.1).

6.6 The line manager should provide the employee with copies of all relevant information/documents. (See appendix 1).

6.7 Meetings may be postponed or rearranged by agreement (e.g. due to sickness). (See section 10).

6.8 The employee has the right to be accompanied by a Trade Union representative or colleague at all formal meetings. If the chosen companion cannot attend on the proposed date, the meeting may be rearranged by agreement as long as the companion offers another date within five working days of the initial date set.

6.9 If the employee has submitted information intended to be used at the meeting, wherever possible it should be submitted **3 working days** before the meeting.

6.10 Anything that may have caused a negative impact on capability should be considered. This could include issues related to disability, health, pregnancy, sickness etc. A referral to OHS may be made if no previous referral has taken place and/or further referral is thought necessary or helpful.

6.11 The line manager should ensure that all the evidence has been taken into account before reaching a decision.

6.12 An improvement plan should be agreed where possible. The improvement plan should include:

* SMART objectives
* support and resources to be provided
* reasonable timescales (and where appropriate intermediate milestones) for achievement of the objectives

The improvement plan should be agreed with the employee concerned.

6.13 If an employee does not agree to the new improvement plan (for example, where they believe the requested targets are not achievable or relate to tasks not relevant to the role), then this will be recorded in the notes of the meeting.

6.14 The employee will be sent a copy of the agreed improvement plan usually within **10 working days.**

 **Review Period**

6.15 The line manager should meet the employee regularly during the period of the improvement plan to monitor progress in line with the time-scales agreed.

6.16 At the end of the review period the line manager should:

* examine information gathered during the regular review meetings
* consider whether the employee’s objectives have been met
* assess the support and training and/or adjustments the employee has received/undertaken.

6.17 The meeting line manager should review whether any adjustment or support has been provided in a timely manner. If not, then an extension to the time for the improvement plan should be agreed.

6.18 Following an evaluation of the information the line manager will confirm whether;

* the employee has met the objectives, in which case, normal managerial supervision will be resumed and the employee will be required to maintain the agreed standard.
* further improvements are required in order to meet the objectives set in the improvement plan. The review period will be extended and additional support and improvements will be identified. The extension will normally be for a reasonable, limited and defined period. If the objectives have been met after that extension, normal supervision will be resumed.
* Objectives have not been met and an extension is unlikely to provide adequate opportunity to meet them. In this case the outcome of stage 1 will become evidence to be used at stage 2.

6.19 The line manager will confirm in writing the outcome of the review and any associated improvement plan to the employee usually within **10 working days** of the meeting.

 **Stage 2 Formal Meeting and Review**

6.20 The process for stage 2 will be the same as at stage 1 (see 6.5 - 6.15) except that the meeting manager will be a manager independent of the people and issues concerned and senior to those involved previously. The evidence supplied will also include outcomes from stage 1.

6.21 The line manager will provide a brief summary of the issues and actions taken to date and provide copies of all relevant information/documents from stage 1.

6.22 An updated/new improvement plan should be agreed with SMART objectives. It will usually be necessary to consider additional support for the employee at this stage.

6.23 The employee will be informed of the outcome in writing usually within **5 working days**. The letter will include a statement that if the objectives outlined in the improvement plan are not met, one consequence could be referral to stage 3 of the formal procedure which could lead to changes to the employee’s contract or if there is no alternative, to dismissal.

6.24 The review process will follow the process at stage 1 (see 6.15 – 6.20).

6.25 If the agreed outcomes are not reached during the period of the improvement plan and an extension is not appropriate, the matter should proceed to stage 3 of the formal procedure.

 **Stage 3 Formal Meeting**

6.26 The decision to proceed to stage 3 can only be made if earlier stages have been exhausted and in the stage 2 meeting manager’s view that the employee is not capable of carrying out the requirements of the post.

6.27 The line manager should provide details of the issues, action taken to date and copies of relevant correspondence including investigations, support / adjustments provided and/or Occupational Health reports from the previous stages. The manager who made the decision at stage 2 will provide a summary of the reasons for their decision.

* 1. The employee should be informed that the outcome of the meeting may result in:
* Objectives have been met
* Another improvement plan or extension to an existing one. At the end of any extended review period the stage 3 panel will reconvene to review progress and/or decide the outcome
* Adapting work, work place or working arrangements, including hours of work
* A change in role not involving a reduction in grade and/or pay
* A change in role involving a reduction in grade and/or pay
* A decision to dismiss

6.29 The decision of the panel will be confirmed in writing normally no later than **5 working days** after the meeting and will specify:

* That objectives have been met or
* Objectives have not been met but an extension or a new plan may provide an opportunity for improvement.
* Where relevant, that the employee is incapable of doing their job to the required standard
* Any changes to work or workplace. This may involve changes to the employee’s contract of employment
* In cases of dismissal, that the reason for dismissal is incapability
* The employee’s right of appeal and process for doing so.

6.30 Until the outcome of any appeal has been decided the Stage 3 Review Panel decision (including dismissal) will remain in force. Where an appeal is against a decision to dismiss, the period of notice will have begun at the date of the meeting when the employee was dismissed. Any appeal will normally be held prior to the expiry of the notice period.

6.31 If the appeal is successful the contract of employment will be re-instated and pay and any benefits will be backdated to the date of the dismissal. Continuity of service will be deemed to be uninterrupted.

6.32 A Stage 3 panel may agree a further extension to the review period. At the end of any extended review period the Stage 3 panel will reconvene to review progress and/or decide outcome.

6.33 The employee will be informed of the outcome of their appeal in writing usually within **10 working days.**

7. Appeals

7.1 The purpose of the appeal is not to rehear the case but to consider the grounds of appeal. An employee may appeal on one or more of the following grounds:

* The procedure was applied incorrectly
* The evidence did not support the conclusion of the hearing
* The outcome was too severe
* New evidence has come to light that was not available at the time of the hearing.

7.2 An appeal must be submitted in writing by the employee and sent to Human Resources, normally within **10 working days** of the receipt of notification of the sanction. The grounds for appeal must be clearly stated in accordance with paragraph 7.1 above.

7.3 If appealing on a matter which resulted in dismissal with notice, any appeal will normally be held prior to the expiry of the notice period.

7.4 The employee may be accompanied at the meeting by a Trade Union representative or work colleague and will have the opportunity to state the grounds for his or her appeal and to question any evidence presented during the appeal. Legal representatives are not permitted unless specifically authorised by the HR Director nominee.

8. Appeals – against outcome short of dismissal

8.1 An appeal panel will be convened, consisting of a senior manager of the Faculty or School/Institute/Department or their nominee plus two other managers, one of whom should be from a different Faculty/Department At least one panel member should be from the same occupational group (e.g. academic or professional) as the employee. Panel members should be independent of the people and issues concerned. The Chair should be senior to those previously involved. Where practicable and without causing significant delay, all panel members should be senior to the line manager. The meeting will be convened without unreasonable delay and normally within **20 working days** of receipt of the written appeal.

8.2 An appeal meeting will be conducted in the same way as a capability meeting except that the presentation of cases will be made in reverse order with the employee presenting their case first, followed by the management representative.

8.3 All parties will be informed of the decision of the appeal panel and a summary of the reasons and the action to be taken. This will be in writing and normally within **5 working days** of the hearing.

9. Appeals against dismissal

9.1 An appeal against dismissal for all Academics, and Senior Management (those at Grade 8), will be heard by a panel comprising three persons, one of whom shall be an external member of Council appointed by the Chairman of Council, an academic Head of School/Institute Director and one other member of Senior Management as nominated by the Principal or HR Director or nominee and supported by a representative from Human Resources.

9.2 An appeal against dismissal for Professional and Support employees (Grades 1-7) will be heard by a panel comprising three members nominated by the Director of Human Resources or nominee from a list approved by QMSE and supported by a representative from Human Resources to provide advice.

9.3 The appeal meeting should take place, as soon as practically possible from the date of receipt of the appeal letter, normally within the period of the notice given. The manager and the dismissed employee will be invited to make any written submissions to arrive in HR no later than **3 working days** prior to the hearing. These will then be circulated to all parties prior to the meeting.

9.4 The employee may be accompanied at the hearing by a Trade Union Representative or work colleague and will have the opportunity to state the grounds for his or her appeal and to question any evidence presented during the appeal (legal representatives are not permitted unless specifically authorised by the HR Director nominee).

9.5 At the completion of the appeal, the employee will be advised in writing of the decision and the reasons for the decision normally within **5 working days**. If the appeal is upheld, an alternative sanction than that given at the original meeting may be imposed, but the severity of the original sanction cannot be increased or be subject to a further appeal under this procedure

10. Attendance at Meetings

10.1 The employee (and their representative) should make every effort to attend meetings. If the employee’s representative cannot reasonably attend on a proposed date, he or she can suggest another date so long as it is reasonable and is not more than **5 working days** after the date originally proposed. This five-day limit may be extended only by mutual agreement.

10.2 Where the employee fails to attend a meeting without an adequate explanation, the panel may decide to continue with the meeting in the employee’s absence. The employee will be informed that written submissions may be used in lieu of attending a meeting.

10.3 They will be given the opportunity to submit written evidence and / or to nominate their representative to speak on their behalf.

11. Grievances

11.1 Where an employee raises a grievance in connection with or during the capability process, and where the grievance and capability cases are related, the Director of Human Resources, following consultation with appropriate parties, will give consideration to temporarily suspending the capability process until the grievance is concluded or running them concurrently. In the latter circumstance, the outcome of the grievance must be known before the capability hearing.

11.2 If an employee raises a grievance during the capability process but not related to it, the cases may be run in parallel.

12. Equality & Diversity

12.1 Managers and employees have a responsibility to promote QMUL’s Equality and Diversity policies and standards of conduct by treating others with respect, valuing diversity and maintaining and preserving dignity at work. Managers are required to recognise and consider any relevant issues whilst operating the grievance process and during the course of day-to-day interactions with colleagues and employees.

12.2 Wherever possible panel members and for capability meetings should be chosen to represent the diversity of employees at QMUL.

13. Equality Impact Assessment

13.1 Statistics will be compiled and monitored on numbers of cases by type and at an organisational level and by Faculty/Schools/Institutes/Departments covering all grade groups and subdivided by equality monitoring categories as determined by the Equality and Diversity Steering Group (EDSG). These will be reported to EDSG, QMSE and the recognised trades unions as appropriate.

14. Revision or termination of this policy and procedure

14.1 This operation of this policy and procedure will be periodically reviewed with the recognised Trades Unions.

**Appendix 1**

Legal Representation

Legal representation for the employee may be permitted in exceptional circumstances or if the ability to practice their profession could be jeopardised, but only on the express authority of the Director of HR or their nominee.

Conduct of Meetings

The Chair will ensure that everyone is aware of the purpose of the meeting.

The Chair will ensure that all documents have been received and that each party has a set plus copies of the relevant policy and procedure.

In the event that a new document and/or evidence has been tabled during the hearing, agreement will be sought that it is acceptable.

The Chair and panel will keep an open mind and listen carefully to all that is said.

Where relevant, discussion will cover:

* whether expectations are reasonable
* any concerns about the employee’s ability to carry out the job to the standard expected
* the possible causes and whether any reasonable adjustments are required
* agreeing an improvement plan including SMART objectives, dates for monitoring and review discussions during the informal process. The agreed plan should allow reasonable time for the employee to meet standards, taking into account all aspects of the post and as necessary the effect on students and colleagues.
* the implications of not meeting objectives within the agreed timescales, e.g. progressing to formal processes

Criticism should be constructive, with the emphasis on finding ways for the employee to improve and for the improvement to be sustained. This could include providing staff development, training, mentoring and coaching.

Conduct of Stage 3 Meetings

Procedure

The QMUL representative (usually the Stage 2 manager) will put forward the case in the presence of the employee and his/her companion.

The employee (or his/her representative) will have the opportunity to ask questions of the QMUL representative.

The panel conducting the meeting shall have the opportunity to ask questions of the QMUL representative.

The employee (or his/her representative) will make a response.

The QMUL representative will have the opportunity to ask questions of the employee.

The panel conducting the meeting will have the opportunity to ask questions of the employee.

The QMUL representative followed by the employee (or his/her representative) will have the opportunity to sum up their cases if they wish.

Adjournments

Requests for adjournment should be addressed to the Chair. The Chair may adjourn the proceedings at any stage if this appears necessary or desirable.

Conduct of Appeal Meetings

An appeal meeting will be conducted in the same way as a hearing except that the presentation of cases will be made in reverse order with the employee presenting their case first, followed by the line manager. Appeal meetings will not be a rehearing of the case and will therefore be confined to the grounds of appeal.