

# WYCLIFFE HALL

- OXFORD -



## Capability Procedure/Policy

### 1 Background and Scope

- 1.1 Wycliffe Hall is wholeheartedly committed to the effective and timely resolution of difficulties, misunderstandings and problems that may arise in the workplace. This policy/procedure has been designed to ensure that consistently fair and effective arrangements exist for dealing with employee performance issues, and to implement and maintain clear and uniform standards that apply to employees' performance and behaviour at Wycliffe Hall. It is designed to contribute to an environment of dignity, respect, open communication and two-way dialogue. In conformity with the Wycliffe Hall's policy of supporting and encouraging individuals' performance and development, the purpose of this policy is not to punish people, but to help individuals who are not meeting the required standards to improve their performance to the level required.
- 1.2 Wycliffe Hall is committed to setting realistic and achievable standards for performance, consistent with employees' terms and conditions of employment. It is the responsibility of line managers to meet regularly with employees on an individual basis to discuss performance, ongoing work and any associated issues and relevant topics impacting performance. The regularity and length of meetings is dependent on the employee's role, experience and range of responsibilities and should be decided by the line manager following reasonable consultation with the employee.
- 1.3 This policy applies to all employees of Wycliffe Hall, who have successfully completed any probationary period of paid employment. It does not apply to employees who are in a contractual probationary period for which other provisions are made.
- 1.4 This policy aims to bring prompt and successful resolution to problems linked to performance where a line manager considers an employee is not fully meeting expected requirements of the role and/or which may arise from an employee lacking sufficient capacity to perform the role fully. At each point in the procedure, the employee will be given a full explanation of the perceived weaknesses or deficiencies in performance.
- 1.5 The provisions of this policy in relation to dismissal do not apply where dismissal arises out of:
  - the expiry of a fixed term contract of employment;
  - the termination of casual or temporary contracts of employment;
  - redundancy; or
  - the termination of a probationary contract under the rules of the relevant probation arrangements.
- 1.6 Wycliffe Hall does not regard medical capability as a disciplinary matter. However, where an employee's sickness absence is considered to have rendered him or her incapable of satisfactorily carrying out his or her duties, with the result that Wycliffe Hall cannot continue to sustain his or her employment, the formal procedures set out in this policy will be used as a medical capability procedure to warn the employee of his or her position and, where necessary, to terminate employment. In such cases correspondence with the employee will, of course, refer to medical capability and not to misconduct or poor performance.
- 1.7 Time limits are indicated in working days and are included in this policy for the benefit of both employer and employee in order to ensure that matters are dealt with promptly and without undue delay. No party should unreasonably delay meetings, hearings, appeals, decisions or confirmation of those decisions. However, in complex matters it may be appropriate to extend time limits provided in the policy, and this should be clearly communicated.

## **Capability Procedure/Policy**

### **2 Roles and Responsibilities in Managing Performance**

- 2.1 Wycliffe Hall's employees have a responsibility under their terms and conditions of employment to achieve an acceptable level of performance at work in line with their job description and objectives and will be supported and encouraged to reach or exceed that level.
- 2.2 Wycliffe Hall's line managers are responsible for managing the performance of employees reporting to them and instigating the formal capability process when informal efforts to resolve performance issues have proved fruitless. Where a perceived conflict of interest occurs, the Principal may identify an alternative individual who is considered to have an appropriate level of capacity, experience and authority to instigate the proceedings.
- 2.3 The Principal is responsible for the oversight and management of the entire capability procedure in the formal stages, supported by the Bursar in his or her role as the effective Head of Human Resources (HR) for Wycliffe Hall. Any capability concerns related to the Principal, or other member of the Senior Management Team will be discussed with the Chair of the Hall Council at a very early stage.
- 2.5 Authority with regard to overseeing the formal stages of the capability procedure may be delegated to another member of the Wycliffe Hall Senior Management Team or Hall Council in accordance with the wishes of the Principal, or the Chair of the Hall Council.
- 2.6 Wycliffe Hall may utilise the services of an external HR professional advisory service as required to provide advice and guidance and to ensure that matters concerning capability and performance are handled fairly, reasonably and in compliance with current legislation and Wycliffe Hall's procedure.
- 2.7 All subsequent references to the formal procedure will understand these arrangements regarding roles and responsibilities to be implicit.

### **3 Record Keeping**

- 3.1 Written contemporaneous records will be kept at each stage of the formal procedure. Depending on the complexity of the case, a formal note-taker from the Wycliffe Hall staff may be invited to meetings to take the required formal record (this will be a summary rather than verbatim notes). Attendees of any meeting(s), hearing(s) or appeal(s) during the formal procedure will be asked to sign and date meeting notes and/or any other record of events without unreasonable delay. Should it prove impossible to reach agreement over a meeting record and at least one party does not wish to sign and date the account, the individual or individuals should state their reasons for disagreement immediately in writing and this should also be kept on record. Supporting documentation supplied as evidence by any party will also be retained and shown to all parties.
- 3.2 Records of the formal proceedings include:
  - the nature of the performance issues
  - identities of employee and parties involved in proceedings
  - related correspondence
  - what was decided and actions taken
  - the reason for the actions
  - whether an appeal was lodged
  - the outcome of the appeal
  - any subsequent developments.
- 3.3 Records will be treated as confidential, retained and only disclosed in accordance with the Data Protection Act 1998.

## **Capability Procedure/Policy**

### **4 Reasonable Adjustments for Special Requirements**

- 4.1 Wycliffe Hall is committed to ensuring that employees and their representatives do not experience any disadvantage because of disability or any special requirements. Further details are available in Wycliffe Hall's Disability Equality Policy. The employee is encouraged to raise any queries relating to disability or other needs at the earliest opportunity. Wycliffe Hall will make attempts to accommodate such requests, where reasonably practicable.

### **5 The Right to be Accompanied**

- 5.1 All employees have the right to be accompanied by a colleague at meetings, hearings and appeals under this policy. If the colleague is not an employee of Wycliffe Hall, then the employee must seek the prior agreement of Wycliffe Hall (such agreement not to be unreasonably withheld). The colleague will be entitled to reasonable, paid time off to prepare for and attend proceedings. The employee's representative will not be acting in a legal capacity.
- 5.2 The member of staff must make all such arrangements for his or her own representative to attend the meeting(s)/ hearing(s). Correspondence relating to each stage of the procedure should be copied to the employee's representative, once known.
- 5.3 Employees will always be consulted about the date and time of a proposed meeting, hearing or appeal and allowed adequate time to arrange representation. Members of staff and their work colleagues are required to make every effort to attend the meeting, hearing or appeal. If a representative or work colleague is unavailable on the date of a formal meeting, hearing or appeal, the Chair should arrange a suitable alternative date, provided this is within a reasonable timescale e.g. within five to ten working days after the date initially proposed.
- 5.4 The work colleague accompanying the employee is entitled to:
- address the meeting/hearing to put and sum up the employee's case;
  - address the meeting/hearing at the employee's request;
  - ask questions to clarify understanding of the proceedings;
  - to confer with the employee during the meeting/hearing; and
  - request adjournments at reasonable intervals to discuss and give advice to the employee.
- 5.5 The employee's representative will not have a right to answer questions on behalf of the employee and will not be permitted to address the meeting or hearing if the employee does not wish it. Those present must not behave in a way that prevents any other person present explaining his or her views or from making a contribution to the hearing.
- 5.6 All subsequent references to the formal procedure will understand these arrangements regarding employee representation to be implicit.

### **6 Guidelines for Informal Action**

- 6.1 Wycliffe Hall actively encourages employees and line managers to seek resolution of potential difficulties in the workplace through informal means as quickly as possible.
- 6.2 When a line manager has concerns about the performance of an employee, they may wish to consult their manager about the most appropriate means of dealing with the perceived problem.
- 6.3 Performance issues are usually best dealt with by a manager informally, and without delay. Informal action is expected to be taken in the form of a confidential one-to-one conversation between the employee and his or her line manager. The line manager is expected to explain why the expected standards of performance do not appear to have been met, and discuss the occasion(s) when deficiencies have occurred. The line manager is expected to also define the expected standard of performance and describe the improvement that is needed.
- 6.4 The employee may wish to give mitigating reasons and explain factors for any deficiencies in performance and it may be that the informal meeting may need to reconvene after the line manager has had opportunity to fully reflect upon these.
- 6.5 Together, the employee and his or her line manager are expected to informally discuss ways in which the employee can achieve the necessary improvement and how future progress will be monitored. At this stage, the employee should be cautioned that if their performance does not improve they may be subject to formal disciplinary action as set out below.

## Capability Procedure/Policy

- 6.6 A record of informal action should normally be put into writing by the line manager, along with a programme of action for improvement, setting targets and deadlines for meeting objectives a competent holder of the post could reasonably be expected to meet. For the majority of administrative and other support staff roles, a review period from one week and up to three months' duration could be expected, but the nature of academic work and associated job requirements are such that longer-term targets may be set for academic staff. The programme will normally be a written document, a copy of which is to be retained by the manager and the employee to for reference and clarity on timescales, objectives and expectations.
- 6.7 Before agreeing a programme of action, the employee may wish to consult with a colleague or a friend.
- 6.8 If agreement cannot be reached, the line manager should consult with the Principal for advice and/or involvement in reaching a mediated agreement on a programme of action. The line manager may then impose a programme of action or recommend to the Principal that the formal procedure be invoked.
- 6.9 If the necessary improvement in performance is achieved within the set time-scale, no further action will be necessary and all copies of the documentation involved should be forwarded to the Bursar for retention on the employee's personnel file for the following twelve months. At the end of this period they will be removed.

## 7 Formal Procedure: Investigation

- 7.1 If the line manager considers it has not been possible to remedy the issue or issues informally, or exceptionally where the issue is sufficiently serious to warrant formal action without initial informal considerations, the line manager will be expected to bring the matter to the attention of their manager and/or the Principal, and recommend that the formal capability procedure be invoked.
- 7.2 If in the opinion of the Principal, there is a *prima facie* case for invoking the formal capability procedure, an investigation will be launched to gather relevant information and establish whether there is in fact a capability case to answer. No formal capability meeting or hearing will be convened without a reasonable investigation of the circumstances.
- 7.3 The purpose of the investigation is to gather relevant information and to determine if there is a potential capability case to answer. The extent of the investigation will be proportionate to the seriousness and complexity of the case. The investigation process will depend on the nature of the alleged problem and the initial evidence against the employee.
- 7.4 An employee who is the subject of an investigation will be informed as soon as is practicable and appropriate that the investigation is going to take place and why. This information will be confirmed in writing as soon as possible.
- 7.5 The Investigating Officer will be an individual who is considered by Principal to have an appropriate level of capacity, experience and authority to undertake the investigation, which again will be proportionate to the complexity and seriousness of the case. The Investigating Officer must not be the employee's line manager, the line manager of any person making a complaint that led to the investigation or the person expected to conduct any resulting formal meeting.
- 7.6 The Investigating Officer may make one of three recommendations to the Principal:
- That there is no case to answer and no further formal action should be taken;
  - That the issues raised should be resolved informally, with training and support provided as appropriate; or
  - That the investigation has demonstrated that there is a case to answer and that the formal capability procedure should be invoked accordingly.
- 7.7 The employee will be advised of the outcome as soon as is practicable and will be advised on any next steps.

## Capability Procedure/Policy

### 8 Formal Procedure: First Formal Meeting

- 8.1 Following consultation with the Investigating Officer and/or the Principal, the line manager will invite the employee to a formal meeting. At least five working days' notice of the hearing should be given.
- 8.2 During the meeting, the line manager will:
- a) remind the employee that this is the first formal meeting in Wycliffe Hall's capability procedure;
  - b) confirm the role of the employee's representative;
  - c) inform the employee that their performance has been judged to have fallen below the standard expected, giving precise details of what is expected;
  - d) state the details and provide evidence of the poor performance and the impact this is having on service delivery;
  - e) give the employee the opportunity to give an account of any circumstances or other mitigating factors and of the extent to which they may have affected the employee's performance and in an environment of open communication, endeavour to establish the root cause of the unsatisfactory performance;
  - f) discuss with the employee the range of available options at this stage of the procedure including that of a Formal Written Warning, to enable the employee to improve to the required standard;
  - g) agree with the employee an appropriate way forward and set a timeframe for a plan of action to be drawn up, including specific targets, if appropriate, with timescales;
  - h) explain how progress will be assessed and set a review date, which will be dependent on the circumstances of the case; and
  - i) explain that failure to reach the required standard during the review period may lead to further formal action, including the possible termination of employment on the grounds of capability.
- 8.3 The employee may be issued with a Formal Written Warning as a result of the meeting.
- 8.4 The outcome of the meeting will be formally recorded in a letter to the employee within 5 working days of the hearing. Where a formal written warning is given, a record of the warning will be placed on the employee's personnel file and will be kept on that file for a period of 12 months, subject to satisfactory performance.

### 9 Formal Procedure: Second Formal Meeting

- 9.1 If performance remains below the standard required by Wycliffe Hall beyond a specified timeframe for improvement, then a second and final formal meeting between the employee and the line manager's manager will take place. In the event that the line manager's manager is unavailable, the Principal may identify an alternative member of staff or Hall Council member to undertake the task. Employees should always be given at least 5 working days' notice.
- 9.2 The second formal meeting will be conducted in the same manner as in the first formal meeting, but in addition to the relevant matters listed under the first formal meeting the manager will:
- a) Consider the extent to which the employee's performance has failed to reach the set standards. Any shortfall against targets set must be identified clearly and openly and an assessment made of the elements of work that cannot be performed adequately.
  - b) Invite the member of staff to give their opinion on progress made, the support and training made available and any other options they have considered.
- 9.3 Following the meeting the employee will be notified in writing within 5 working days of the improvements required and the timescale for improvement and a date will be set for a further review. The outcome of this hearing will also be communicated at this time; at this point the employee may also be issued with a Final Written Warning.
- 9.4 The employee will be notified of the improvements required and the timescale for improvement and, if appropriate, specific targets set. Where a formal written warning is given, a record of the warning will be placed on the employee's personnel file and will be kept on that file for a period of 12 months, subject to satisfactory performance.

## Capability Procedure/Policy

### 10 Formal Procedure: Capability Review Hearing

- 10.1 Should an employee's performance/attendance levels remain at an unsatisfactory standard then the employee will be informed of the need to attend a capability review hearing to decide whether dismissal or other appropriate action such as change in role and/or demotion may be taken.
- 10.2 The capability review hearing will have a panel appointed by the Principal.
- 10.3 The capability review hearing will be heard by a Panel comprising two members of staff or Hall Council not previously involved in the capability procedure. The panel will be appointed by the Principal.
- 10.4 For the avoidance of doubt, should the capability procedure concern a member of the Senior Management Team and the person leading the hearing is a member of Hall Council, there should be an additional member of Hall Council appointed to serve on the panel.
- 10.5 The hearing will proceed as follows:
- a) Introductions of those present and their roles.
  - b) Confirmation of the role of the employee's representative, i.e. that the representative will be able to address the hearing to put the employee's case forward, sum up the case, respond on the employee's behalf to any view expressed at the hearing and conferring with the employee but will not directly respond to questions on behalf of the employee.
  - c) Exploration of the issues underlying the employee's unsatisfactory performance – both the employee and line manager will be invited to state their case.
  - d) After the issues in question have been explored, the chair of the panel may consider whether to:
    - give all the opportunity to review what has been said and consider whether there is anything they wish to clarify;
    - seek clarification on any issues before bringing the hearing to a close.
  - e) If the panel is unable to make a decision as further information or time is required, the chair will adjourn the hearing and ensure that there is a clear understanding as to how matters will be communicated, including (where applicable) the time when the hearing will be reconvened.
- 10.6 Following the hearing, the panel will decide either:
- a) the assertion of incapability has not been proven;
  - b) the assertion of incapability has been proven and that the appropriate action in the circumstances is that the employee should be dismissed;
  - c) the assertion of incapability has been proven and that the appropriate action in the circumstances is that the employee should not be dismissed but to offer a change in role or demotion instead; or
  - d) the assertion of incapability has been proven and that the appropriate action in the circumstances is to give the employee a further opportunity of a six months review period to demonstrate that he or she is capable of achieving and sustaining the required level of performance.
- In the event the panel selects option iv, and the employee is placed under review, the panel will suggest arrangements to monitor the employee's ongoing progress, and advise the employee of the consequences of any subsequent lapse(s) in performance. The Principal will also formally review the fulfilment of performance requirements at intervals to be agreed by the panel and communicated to the employee at the start of the probation period. If it becomes apparent that these requirements are not being fulfilled then the Principal, in consultation with the Senior Management Team may decide either to:
- re-convene the panel to consider only what has transpired in the review period;
  - re-convene the panel for a full hearing of the whole case
- 10.7 Where it is identified that further essential information or clarification is required, the panel may decide to adjourn the hearing to enable further investigation. In such a case, an indication of the timeframe for this should be provided. Once completed the panel should be reconvened.

## **Capability Procedure/Policy**

- 10.8 Depending upon whether the panel has been able to make a decision, the employee will receive confirmation or notification of its decision in writing usually within 5 working days of the hearing from the Principal (or Chair of Hall Council if concerning a Senior Management Team member). If a decision to dismiss the employee is made then the dismissal letter will include the following:
- a) The reason for dismissal;
  - b) The date on which the employment will terminate; and
  - c) Confirmation of the employee's right of appeal.

## **11 Formal Procedure: Appeals**

- 11.1 The appellant, i.e. an employee who wishes to appeal against a disciplinary warning or dismissal, shall inform the Principal within 10 working days of the date of the written notification of the warning or dismissal; full details of the grounds of appeal must be included.
- 11.2 An appeal against a disciplinary warning, up to and including the level of formal, final written warning, will be heard without unreasonable delay by an appropriate senior manager/officer not previously involved in the case, nominated by the Principal.
- 11.3 An appeal against dismissal will be heard by an Appeal Panel comprising two members of the Senior Management Team not previously involved in the disciplinary procedure nominated by the Principal. In the event of Senior Management Team members not being available to hear the appeal, Hall Council members will be called upon to facilitate the appeal hearing.
- 11.4 In cases of an appeal against dismissal, the decision of the Appeal Panel will be reported to the Hall Council.
- 11.5 All appeal hearings will involve the appellant and the manager who took the action resulting in the appeal.
- 11.6 An appellant will normally be given at least 5 working days' written notice of the date of an appeal hearing.
- 11.7 Appellants are expected to attend appeal hearing. In exceptional circumstances where the employee is unable to attend the appeal hearing, he or she must, as soon as possible, inform the person who sent the letter inviting them to attend as soon as possible. Should an employee request a postponement to an appeal hearing on more than one occasion, Wycliffe Hall reserves the right to hold the hearing in the employee's absence.
- 11.8 In all cases, the person(s) hearing the appeal shall have the authority to reach any of the following conclusions:
- that the original decision of the hearing be upheld in its entirety;
  - that the grounds for appeal be upheld in their entirety and that the disciplinary action be expunged from the appellant's employee record or that the dismissal is overturned;
  - that a lesser sanction be substituted for that imposed by the original formal hearing.

## **12 Overlapping Grievance, Capability and/or Disciplinary Cases**

- 12.1 If an employee raises a grievance during a disciplinary procedure, and the grievance and disciplinary cases are related, both cases will normally be dealt with concurrently.
- 12.2 Where it is not appropriate to deal with both issues concurrently the disciplinary procedure may be temporarily suspended in order to deal with the grievance.
- 12.3 If a disciplinary matter arises during a capability procedure, both cases will normally be dealt with concurrently.
- 12.4 In all cases every attempt will be made to avoid multiplicity of procedures and associated delay.

## **13 Equal Opportunity**

- 13.1 All parties involved in the operation of this policy shall ensure that its application is in alignment with the Equality Act 2010 and the principles contained within Wycliffe Hall's Equality Policy.

Capability Procedure/Policy

<b>VERSION CONTROL</b>						
<b>Version Number</b>	<b>Policy Gatekeeper</b>	<b>Date Approval</b>	<b>of</b>	<b>Committee</b>	<b>Date to Take Effect</b>	<b>Date of Next Review</b>
<b>Version 7.3</b>	<b>AJB</b>	<b>4.3.15</b>		<b>Governance</b>	<b>4.3.15</b>	<b>October 2015</b>