UCL Capability Policy
Appendix A: Procedure for Managing Poor Performance

In most cases where poor performance is evidenced, managers should commence at Stage 1, using the informal procedures. The aim is to improve performance promptly and locally by addressing any factors impeding the meeting of objectives, and to avoid escalation to a formal procedure.

Where a first instance of unsatisfactory performance is considered sufficiently serious to warrant bypassing the informal stage of this procedure altogether, the employee should be invited to a Stage 2 Formal Hearing to discuss the issues of concern.

1. Informal Action

Stage 1 – Informal Meeting

1.1 Where there is evidence that an employee is not performing at an acceptable level, meaning that agreed work objectives are not being met, which might include where Health and Safety is put at risk or where costs or other liabilities are being incurred, the manager should investigate the reasons promptly for this at a meeting with the employee.

1.2 First Review Meeting

During the course of this meeting the manager should:

- Make clear to the employee where their performance is not reaching expectations, giving specific examples to provide evidence of the grounds of underperformance;
- Explain clearly the shortfall between the employee’s performance and the required standards of the role and review support and training provided;
- Give the employee the opportunity to explain their performance and to raise any concerns they have about their job; the support and guidance they have been given to do their job; and put forward explanations for their performance;
- Ask the employee's opinion on what she/he can do to achieve improvement in performance;
- Consider any relevant mitigating factors which are put forward
1.3 Where it is apparent that there are mitigating factors impacting on performance such as insufficient training, guidance and support, health concerns, or other significant matters, these should be explored and appropriate support offered. A further review should then be set to assess whether the guidance and support offered has improved the performance to satisfactory standards.

1.4 Where there are no apparent mitigating factors, or support and guidance has not led to the necessary improvements, the following action should be taken:

- Set clear ‘SMART’ improvement objectives with the employee
- Agree a timescale for this improvement to be achieved, which should normally be not less than four weeks and not more than three months
- Complete a Performance Improvement Plan and send a copy to the employee
- This form will be shared only between the employee and the manager at this stage
- Set date for next review meeting
- Clarify that if there is no improvement, the formal stage will be entered into.

Potential remedies for poor performance might also include:

- Additional training
- Coaching
- Reviewing workload
- Providing a mentor or ongoing support
- Agreeing a trial change to the current contractual working hours to allow for greater flexibility, with a corresponding reduction in salary where working hours are reduced
- Making reasonable adjustments (if appropriate).

1.5 The manager should ensure that the member of staff is aware of the level of performance and productivity required in relation to each element of the duties of their job about which there is a concern.

1.6 Second Review Meeting

A further meeting should be arranged at the end of this period to review the employee’s performance against any agreed SMART objectives. When establishing an agreed time frame within which improvement should occur, managers must consider the complexity of the tasks involved in relation to the relevant skills, knowledge and experience of the employee concerned. The manager should make clear to the employee that if their standard of work performance does not improve to the anticipated level, this could result in formal action under the Capability Procedure.

After the second review meeting, the manager should confirm in writing:

- That sufficient improvement has been made, and the need to sustain this standard; or
- Sufficient improvement has not been made and that formal procedures will be invoked.
2. Formal Procedure

Stage 2 – First Formal Hearing

2.1 If performance continues to be unsatisfactory, or in cases of more serious incidents of poor performance, such as where health and safety has been put at risk, a formal hearing will be convened by the employee’s manager. Any grievance raised which is linked to alleged poor performance will not typically halt the application of this procedure: rather, the issues will be combined and addressed together. The manager conducting the hearing will normally be the employee’s manager. A relevant member of HR Advisory Services who will be the HR Advisor must be contacted by the manager initiating the investigation to provide advice and support in conducting the hearing.

2.2 At all formal stages of this procedure, the employee must be given at least 10 working days’ notice in writing of any hearing. However, a hearing can be held with less notice if the employee agrees to this.

2.3 At all formal stages of this procedure, the manager should write to the employee to notify them of the hearing. The manager should also provide the employee with evidence of the underperformance concerns. In the notification of the hearing, the employee will be advised of:

- The time, date and location of the hearing
- The purpose and possible outcomes of the hearing
- Their right to be accompanied by a work colleague or trade union representative
- The right to call appropriate witnesses who can provide evidence relevant to their case.

2.4 The employee should inform HR Advisory Services in writing of the names of any witnesses (s)he would wish to call at least 8 working days in advance of the hearing. The employee should ensure that any documentary evidence which they wish to rely upon at the hearing is provided to HR Advisory Services at least 7 working days prior to the meeting.

2.5 If the employee’s workplace colleague or trade union representative is unable to attend a hearing held at the appointed time for any formal stage of this procedure, she/he may request a postponement and suggest an alternative time and date. Where the suggested alternative is reasonable and within 5 working days of the original date, the hearing will be rescheduled by the manager.

2.6 At all formal stages of this procedure, the person accompanying the employee shall have an opportunity to address the hearing, put and sum up the employee’s case, respond on behalf of the employee to any views expressed at the hearing, and ask to confer privately with the employee during the hearing. They do not have the right to answer questions on the employee’s behalf, address the hearing if the employee does not wish it, or prevent any party from explaining her/his case.
2.7 Under exceptional circumstances, application of the Procedure for Managing Poor Performance may be paused (at the discretion of the Head of Department) where the nature of a grievance raised seriously draws into question the motivation of the employee’s manager. For example, if the employee alleges that the Procedure for Managing Poor Performance has been engaged because they have a protected characteristic, the Head of Department (with advice from HR Advisory Services) will need to judge whether or not it is necessary to investigate the grievance ahead of any hearing taking place concerning an employee’s performance. Where a grievance has been raised which is linked to the application of the Procedure for Managing Poor Performance, the hearing manager may elect to arrange for the appointment of a three person panel to conduct a grievance hearing. The line manager will be called as a witness to address this panel as will the employee concerned. Bearing in mind the nature of any grievance raised in connection with allegations of poor performance, any panel appointed should be balanced. The Hearing Manager should be advised by a representative from HR Advisory Services who will be present at the hearing. Any grievance raised by an employee which does not relate to this Policy and Procedure, will be subject to UCL’s Grievance Policy and will not be unduly delayed by application of the Procedure for Managing Poor Performance.

Hearing Procedure

2.8 At the Formal Hearing, the manager will remind the employee of the earlier informal discussions on performance (where these have happened) and the steps taken to support an improvement in their performance. The manager will outline, providing examples, why the employee’s performance is still not considered to have reached the level required. In response the employee will be given the opportunity to explain their unsatisfactory performance and put forward any mitigating circumstances.

2.9 If, in the view of the manager, the employee is unable to provide a satisfactory explanation for their poor performance, a Formal Warning may be issued to the employee for unsatisfactory performance.

2.10 If a Formal Warning is issued verbally at the end of the hearing, a written notification of the outcome of the hearing should be provided within a maximum of 5 working days. This written notification should include:

- The issues discussed;
- Any agreed outcomes of the hearing, such as training, changes to working practices, contractual hours, and working conditions;
- The specific improvements in performance identified including any agreed SMART objectives;
- Other agreed actions;
- A summary of the consequences of not making the necessary improvements to performance, including possible dismissal;
- Outline the employee’s rights of appeal;
- The terms and timescale within which improved performance will be measured and reviewed, which should normally be not less than four weeks and not more than three months; and
- The details of a future hearing at the end of this period at which the employee’s performance will be reviewed formally.
2.11 If the manager does not feel that taking formal action is appropriate (s)he may either advise the employee in writing that no further action will be taken. Alternatively, they may agree a timescale for a further informal review of the employee’s performance.

2.12 If a Formal Warning has been issued, it will be placed on the employee’s HR file for a period of twelve months and will be disregarded after this period has elapsed, provided that no further Formal Warnings occur during this period.

Stage 3 – Second Formal Hearing

2.13 If there has been insufficient improvement in performance within the designated timescale following a Formal Warning, or if further serious performance issues arise during this period, the hearing set for the performance review may be brought forward. The Head of Department or Division will normally chair the hearing unless they have already conducted Stage 2. In this case another senior manager should chair the hearing. The chair of a Stage 3 hearing is referred to as the ‘Hearing Manager’.

2.14 The employee should be invited in writing by the Hearing Manager to this Stage 3 Formal Hearing. The notification letter must set out a summary of the outstanding performance issues and make clear that possible outcomes of the hearing could include dismissal with notice. The employee should be provided with copies of any papers that will be considered at the hearing at least 5 working days before the hearing.

Hearing Procedure

2.15 At the hearing the line manager should present the history of the case, including the steps that have been taken to support the employee to achieve the required level of performance, to the Hearing Manager. In response, the employee (or their companion) will be given the opportunity to explain the unsatisfactory performance. This will be the employee’s opportunity to put forward any mitigating circumstances or raise any issues she/he wishes to have considered.

2.16 The Hearing Manager will consider the explanation put forward both by the line manager and the employee. If the employee is unable to provide a satisfactory explanation for their poor performance, the Hearing Manager may do the following:

- Withhold a salary increment; and/or
- Issue a Final Written Warning, placed on the employee’s HR file for a period of twelve months, and extend or renew the review period, with the line manager setting SMART objectives against which improvement will be measured, and review what support might be necessary to facilitate an improvement; or
- Dismiss the employee on capability grounds (with appropriate notice or pay in lieu of notice).

2.17 The decision may be given verbally at the hearing. Written confirmation of the decision will be provided to the employee no later than 5 working days after the decision is made. The notification should outline rights of appeal against any sanction...
given. In the event of dismissal, the letter must outline the reasons for and date of dismissal together with notice arrangements.

3. Staff Covered By Statute 18

3.1 For staff covered by Statute 18, formal action that may result in a Written Warning shall be managed in line with Stage 2 of this procedure (as outlined between paragraphs 2.1 and 2.10 of this Appendix). A hearing will normally be chaired by the Head of Department (except where natural justice dictates otherwise) and an Appeal heard by a ViceProvost. Subsequent formal action, including actions that may result in dismissal, shall be dealt with under the provisions of Statute 18 Part III, paragraphs 14-20.