

Marbella International University Centre (MIUC)

Managing Poor Performance Policy and Procedure for Staff

Responsibility of:	MIUC Chief Operating Officer
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Approved by:	MIUC Academic Board
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POLICY

1 Purpose

- 1.1 The purpose of the Managing Poor Performance Policy and Procedure for Staff is to encourage and assist improvement in individual performance and to remove barriers to good performance. It is designed to help and encourage all employees to achieve and maintain satisfactory performance standards.

2 Scope

- 2.1 This policy and procedure apply to all MIUC employees including senior post holders, with the exception of new employees who are in their probationary period. Any performance issues will be managed in accordance with the Probation Procedure. For senior post holders, [Appendix 1: Senior postholders](#) should also be observed.
- 2.2 This policy and procedure also apply to scenarios of performance that relate to soft skills and behaviours. It is the expectation that all staff display the required behavioural competence for the role, which is considered equally as important as technical ability.
- 2.3 The MIUC Code of Professional Conduct for Faculty and Staff outlines the procedures for staff disciplinary and sickness and absence management, for issues related to conduct or absence.

3 Principles

- 3.1 All employees will be treated fairly and with respect, in accordance with:
 - Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores, which is available here: [BOE-A-2015-11430 Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores.](#)
 - Resolución de 27 de agosto de 2019, de la Dirección General de Trabajo, por la que se registra y publica el VIII Convenio colectivo nacional de universidades privadas, centros universitarios privados y centros de formación de postgraduado, which is available here: [BOE-A-2019-13119 Resolución de 27 de agosto de 2019, de la Dirección General de Trabajo, por la que se registra y publica el VIII Convenio colectivo nacional de universidades privadas, centros universitarios privados y centros de formación de postgraduados.](#)
- 3.2 Line managers should contact MIUC's Human Resources for advice and support in dealing with performance issues at all levels.
- 3.3 Every effort should be made to deal with matters informally. Where this is inappropriate, or does not result in the necessary improvements, the formal stages of the procedure will be followed.

- 3.4 An employee who is subject to the managing poor performance process may be accompanied at formal meetings by a trade union representative or a work colleague.
- 3.5 The procedure will normally operate sequentially through each stage. However, it might be appropriate in more serious cases of poor performance for MIUC to begin the procedure at the most appropriate stage (with the guidance from Human Resources).
- 3.6 Any action taken under the procedure is designed to be a means of encouraging and assisting employees to improve. No formal sanction will be issued until the matter has been fully considered and the employee has had an opportunity to state his/her case.
- 3.7 If a warning is issued, the employee will be informed of the improvements required, the timescales within which the improvements are required, and the consequences if improvements are not made or sustained.
- 3.8 The timescales for improvements will vary with each case, however the initial period given will not usually exceed 12 weeks.
- 3.9 Where a formal sanction is given, the employee will have the right of appeal.
- 3.10 Notes of meetings will be taken to summarise key points.
- 3.11 In formal proceedings, a copy of the meeting notes will be distributed to the parties present to comment on their accuracy. If it is not possible to agree on the notes, both views will be incorporated into the record with the point(s) of disagreement noted.
- 3.12 MIUC prohibits the covert audio or video recording of formal or informal meetings or discussions. Covert recording will be considered a disciplinary matter.

PROCEDURE

4 Initial action

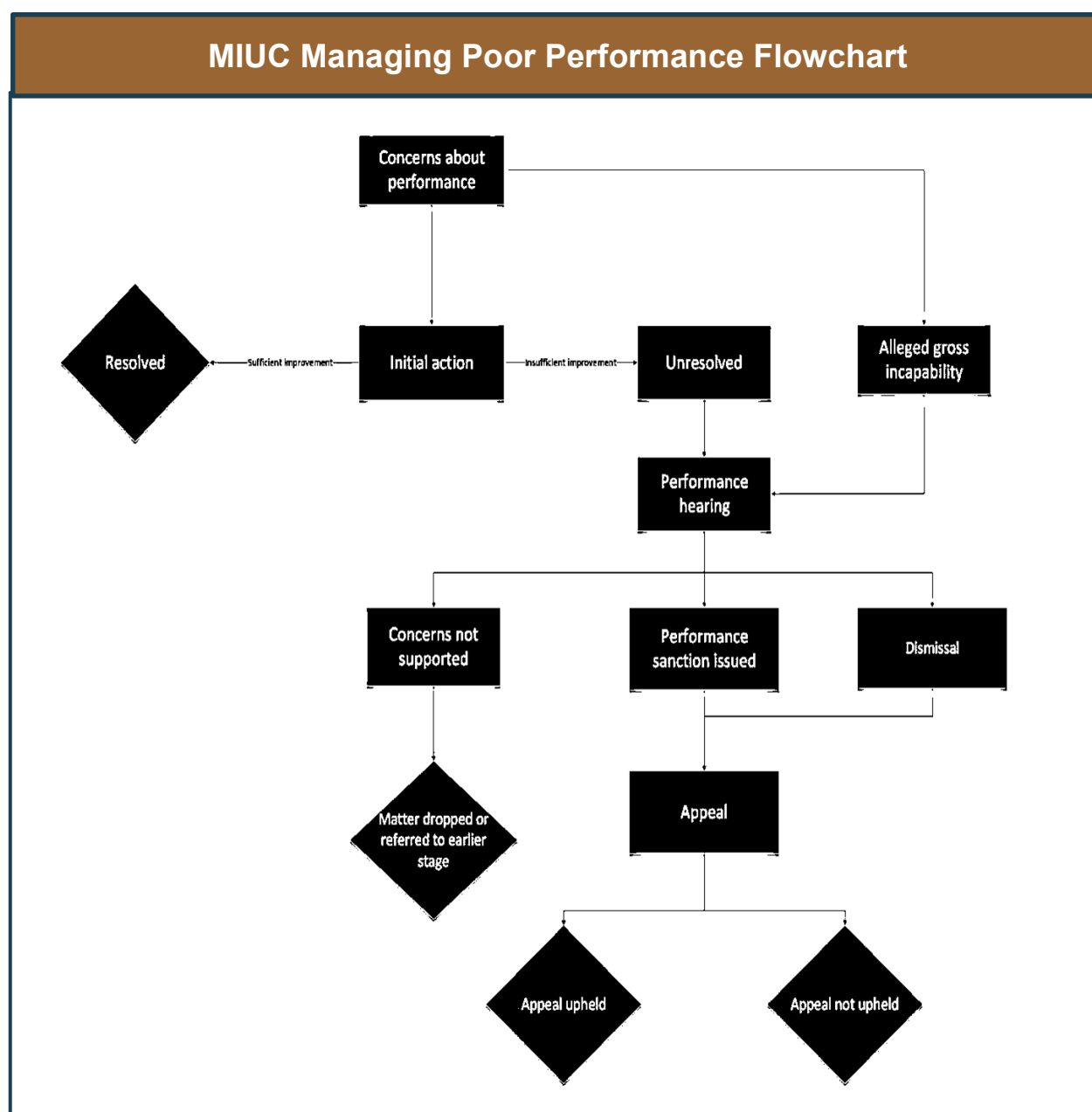
- 4.1 Most performance issues can be dealt with quickly and informally as part of the day-to-day line management process. However, where this fails to result in the required improvements, the line manager should meet with the employee to discuss the concerns. The line manager should seek the employee's views on any possible causes, outline the improvement that is required, and the timeframe within which this should be achieved. It is recommended that this information be supplied in the form of a Performance Improvement Plan (PIP), and a template for such a plan can be provided by HR. The employee will also be informed that failure to meet the required standards is likely to lead to formal action.
- 4.2 The line manager will also discuss and address any support needs with the employee. This may include workplace support, such as any necessary training, or support with any underlying factors such as personal or health issues. If a disability is disclosed, then Human Resources would consider a referral to Occupational Health (Servicios de salud ocupacional) via the Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social, where appropriate, and any reasonable adjustments should be implemented as soon as possible.

- 4.3 Following the meeting, the line manager will write to the employee with a summary of the discussion (along with a completed Performance Improvement Plan document as necessary). No record of initial action will be kept on the employee's personnel file stored in Human Resources.
- 4.4 During the initial review period the line manager should meet with the employee regularly to provide feedback and review progress against the Performance Improvement Plan. The length of the review period will depend on the gap(s) in performance identified, and any additional training or support that is required. In order to allow sufficient opportunity to demonstrate progress, the review period will normally be for a minimum of six weeks (but usually not exceed 12 weeks), but can be shorter or longer depending on the specific circumstances.
- 4.5 At the end of the review period the line manager will arrange to meet with the employee to provide feedback on their view of progress against the Performance Improvement Plan. The outcome will be one of the following:
- If the required improvements have been made, then the initial process will be brought to an end.
 - If some improvement has been made but the standard has not yet been fully met, the review period may be extended.
 - If there has been little or no improvement in performance, the issues will be progressed using the formal stages.

5 Formal procedure summary

- 5.1 Where attempts to achieve satisfactory performance at an informal stage have been unsuccessful, or where performance concerns are sufficiently serious, MIUC will initiate a formal performance procedure. See [section 7 Performance hearings](#) below.
- 5.2 Formal performance hearings will be conducted in accordance with Article 20 and Article 58 of the Spanish Workers' Statute (Estatuto de los Trabajadores), the applicable Collective Bargaining Agreement, and the principles of proportionality, legality and good faith.
- 5.3 Following a performance hearing, a first written warning, final written warning, or dismissal for incapability may be issued depending on the seriousness of the performance concerns. See [section 8 Performance sanctions](#) below.
- 5.4 The employee shall have the right to appeal any decision under this procedure. An appeal should be made in writing to the Chair within 7 working days of notification of the outcome of a formal hearing. See [section 9 Appeal](#) below.

6 Managing poor performance procedure overview (flowchart)



7 Performance hearings

- 7.1 The employee will be given at least 5 working days' notice of the hearing and will have the right to be accompanied by a trade union representative or a work colleague.
- 7.2 A first formal hearing will normally be chaired by the line manager who has been managing the performance process. If appropriate, and where this is agreed, another manager at an appropriate level that has had no previous involvement in the case will be selected to be the Chair. Any subsequent performance hearings relating to the same case will be allocated to the same Chair wherever possible. Where dismissal is a potential outcome, the hearing will be chaired by a member of the MIUC Senior Management Team; refer to [Appendix 1: Senior](#)

[postholders](#) for additional information on the treatment of senior postholders. The Chair will be supported by a representative from Human Resources, who will provide procedural advice. The line manager will also attend the hearing to outline the concerns and will provide any supporting evidence in relation to the employee's performance and/ or to provide an update on progress.

- 7.3 Further documentation may be provided by any party, but this should be made available as soon as possible, and at least 3 working days before the hearing.
- 7.4 If the employee is unable to attend the hearing for unavoidable reasons, they should inform the Chair as soon as possible and where feasible efforts will be made to reschedule the hearing, provided that an alternative date can be arranged within 5 working days of the original date.
- 7.5 If an employee fails to attend the meeting without explanation or it appears that they have not made a sufficient attempt to attend, the meeting may take place in the employee's absence, provided that reasonable efforts have been made to notify the employee.
- 7.6 The employee shall have the right to review the evidence, present arguments in their defence, and submit mitigating circumstances.
- 7.7 During the hearing, the line manager and the employee (and/or their representative) will each be given the opportunity to represent their case.
- 7.8 Once the Chair is satisfied that they have all of the relevant information, including any mitigation presented by the employee, the Chair will close the hearing to consider all of the evidence and make a decision.
- 7.9 Following the hearing, the employee will be informed both verbally and in writing of the outcome, normally within 7 working days. The outcome will confirm the Chair's decision in relation to the performance concerns (whether they are supported or not), what formal sanction will apply (if any), and the employee's right of appeal (if applicable). An extension of time to communicate the outcome can be put in place if this is specifically necessary, or in exceptional circumstances.

8 Performance sanctions

- 8.1 A first written warning may be given following a first performance hearing, where the performance concerns are supported. The first written warning will remain active for 12 months and during this period, MIUC will rely on such a warning in the event of further underperformance.
- 8.2 Where performance continues to cause concern after a first written warning has been issued and remains live, or where the performance concerns are sufficiently serious to omit a first written warning, a final written warning may be issued. The warning will remain active for 24 months and during this period, MIUC will rely on such a warning in the event of further underperformance.
- 8.3 Warnings will be confirmed in writing with all the relevant and required information, which will include:
 - The facts relied upon
 - Performance expectations

- Improvement targets and timescales
 - Consequences of failure to improve.
- 8.4 Disciplinary and performance sanctions must be proportionate to the seriousness of the performance deficiency.
- 8.5 Expired warnings may be taken into account in subsequent proceedings; for instance, where an employee's performance is satisfactory throughout the period of a warning, but lapses very soon thereafter, or where there is evidence of a repeated pattern of underperformance.
- 8.6 Performance sanctions may be accompanied by additional measures permitted under the applicable Collective Bargaining Agreement.
- 8.7 Active performance warnings may be considered when assessing promotion applications, provided this is objectively justified.

Capability Dismissal

- 8.8 The employee may be dismissed if:
- There is no or insufficient improvement in performance following a final or first (if the concerns are sufficiently serious) written warning.
 - The performance deficiency is sufficiently serious to constitute gross incapability.

Gross incapability

Gross incapability would include:

- Occasions where an employee commits a single very significant error with significant operational consequences
- Repeated substantial errors or substantial performance failures
- Conduct or behavioural issues or breaches directly affecting job capability
- Any action with the actual or potential consequences which are so serious that they result in MIUC losing trust and confidence in the employee, thereby breaching the employment contract.

In such instances, warnings may not be appropriate.

- 8.9 Where employment is terminated, the employee will normally receive their contractual notice unless summary dismissal is justified for extremely serious misconduct or incapability.
- 8.10 In exceptional circumstances, and where proportionate and operationally feasible, MIUC may consider alternatives to dismissal such as:
- Demotion with corresponding salary adjustment;
 - Reassignment to alternative duties.

These options will be considered only where it is practicable and in the interest of the MIUC's business operations, with due risks being assessed.

- 8.11 Refer to [Appendix 1: Senior postholders](#) for additional information on the treatment of senior post holders.

9 Appeal

- 9.1 The employee should write to the Chair clearly stating the grounds for appeal within 7 working days and should also include any new documentary evidence that they wish to be considered. Grounds for appeal must be from one or more of the following:
- The sanction applied was inconsistent or disproportionate.
 - New information has come to light that would affect the decision.
 - There was a procedural irregularity that had an impact on the decision.
- 9.2 Where the Chair and MIUC Human Resources are satisfied that there are genuine grounds for an appeal, they will nominate a suitable manager to consider the appeal. Where possible, this will be a manager not previously involved in the case, who is of at least an equivalent grade to the Chair at the previous stage.
- 9.3 Where the appeal is against dismissal, the hearing will be chaired by a member of the MIUC Senior Management Team. The Appeal Chair will be supported by a representative from Human Resources, who will provide procedural advice. Refer to [Appendix 1: Senior postholders](#) for additional information on the treatment of senior post holders.
- 9.4 Where the Appeal Chair and Human Resources are of the view that there are no genuine grounds for appeal, they will write to the employee outlining the reasons for this decision.
- 9.5 Where it is decided that there are grounds for an appeal, notification of an appeal meeting date will be sent to the employee within 7 working days of submission of the formal appeal, wherever possible. An extension of time can be put in place if this is specifically necessary, or in exceptional circumstances.
- 9.6 The employee will be given at least 5 working days' notice of the appeal meeting, and will have the right to be accompanied by a trade union representative or a work colleague.
- 9.7 If the employee is unable to attend the meeting for unavoidable reasons, refer to [paragraph 7.4](#) above.
- 9.8 The appeal meeting will only consider the stated grounds for the appeal, and will not reconsider all matters raised within the original hearing. In considering the grounds for the appeal, the Appeal Chair will assess whether or not the conclusion reached in the original hearing was appropriate.
- 9.9 Following the appeal meeting, the employee will be informed of the outcome in writing within 7 working days, wherever possible. An extension of time to communicate the outcome can be put in place if this is specifically necessary, or in exceptional circumstances.
- 9.10 The decision of the Appeal Chair will be final and there is no further right of appeal.

10 The right to be accompanied

- 10.1 An employee has the right to be accompanied by a work colleague, a trade union representative or an official employed by a trade union at any formal meeting under this procedure.
- 10.2 If the employee wishes it, the companion may address the meeting, respond on behalf of the employee to any view expressed in the meeting, and sum up the case on behalf of the employee. The companion may not answer questions on the employee's behalf or prevent MIUC from explaining the case.
- 10.3 Where the chosen companion is unavailable on the day scheduled for the meeting or appeal, the meeting will be rescheduled, provided that an alternative time can be arranged within 5 working days of the original date.

11 Special cases

- 11.1 If the employee raises an unrelated grievance at any point during this procedure, both processes will normally run concurrently. Where possible, a different manager will be appointed to hear the grievance. Where the grievance is related to the management of poor performance proceedings, the employee should raise the matter with the Chair at the hearing/ appeal hearing.
- 11.2 If the employee has particular requirements as a result of a disability, or informs MIUC of a medical condition that may be relevant, then Human Resources would consider a referral to Occupational Health (Servicios de salud ocupacional) via the Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social. Where appropriate, and any reasonable adjustments should be implemented under disability protection legislation as soon as possible, by mutual consent.
- 11.3 If the employee goes on sick leave whilst action is being taken under this procedure, the process will normally continue. Input from Occupational Health (Servicios de salud ocupacional) via the Mutuas de Accidentes de Trabajo y Enfermedades Profesionales de la Seguridad Social will be sought where appropriate, by mutual agreement.

Appendix 1: Senior postholders

Definition:

Senior post holders for the purpose of this policy include the Chief Operating Officer, the Dean and/or the Chief Financial Officer. The Managing Poor Performance policy and procedure contained herein shall be applicable to "senior post holders" of MIUC.

12 Dismissal of senior post holders

- 12.1 The same procedure will apply to the dismissal of senior post holders (members of the MIUC Senior Management Team). Where the decision to dismiss is a likely outcome of any poor performance hearing, the hearing will be held with a Special Committee of the MIUC Board.

- 12.2 The senior post holder will have the right to make representations to the Committee and may be accompanied by a work colleague or union representative.
- 12.3 The Chair of the MIUC Board will not be eligible for membership of the Special Committee.
- 12.4 Any appeal against the decision to dismiss, will be managed as per the procedure above in [section 9 Appeal](#). The appeal will be considered by the Chair of the MIUC Board.



**MARBELLA
INTERNATIONAL
UNIVERSITY
CENTRE**

ADDRESS Avenida Don Jaime de Mora y Aragón
s/n Finca El Pinillo 29601

Marbella | Málaga | Spain

TEL (+34) 952 860 000

FAX (+34) 952 860 101

E-MAIL info@miuc.org