



Capability Procedure for Senior Post Holders

Policy Area: Governance

Policy Lead: Director of Governance

Approved By: Governance, Performance & Reputation Committee

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1. Scope & purpose

- 1.1. This policy applies to the CEO & Principal and all senior post holders as defined in the Corporation's Instrument & Articles of Government.
- 1.2. References to section numbers are to the numbered sections of this document.
- 1.3. Where the Clerk to the Corporation is also a member of staff at the college, the Clerk should be treated as a senior post holder and will be subject to this procedure. In such circumstances, the Corporation will appoint an appropriate person to fulfil the tasks of the Clerk to the Corporation under these sections.
- 1.4. Unless the Corporation's Articles of Governance set out specific directions and procedures for dealing with the performance management of post holders, these rules are for guidance only and are intended as a statement of the Corporation's policy and do not form any part of any contract of employment or otherwise have contractual effect. The Corporation will review these rules from time to time and may make changes.
- 1.5. The purpose of the Capability Procedure for Senior Post Holders is to ensure that underperformance is dealt with promptly and appropriately and to encourage senior post-holders to improve their performance to an acceptable level.
- 1.6. This Capability Procedure for Senior Post Holders sets out the policy and procedure we operate, on an informal and formal basis, to address poor performance (by which we mean lack of skill and aptitude in undertaking a job role); and genuine persistent, intermittent short-term absence.
- 1.7. We will comply with relevant data protection laws and our data protection policies when handling information about your health.

2. General principles

- 2.1. Every effort will usually be made to avoid the use of formal capability procedures where alternatives are appropriate. Where the matter is not resolved informally or is of a serious nature, the formal procedure will be used.
- 2.2. The Corporation will ensure that its members are familiar with the provisions in this procedure.

3. Procedure

- 3.1. Where you are failing to perform to a satisfactory level, or where your attendance levels are unsatisfactory due to persistent, intermittent, short-term absence, the purpose of this capability procedure is to encourage and help you to improve your performance and/or attendance to a level acceptable to us.
- 3.2. The action taken in each case will be that which we consider appropriate taking into account the particular circumstances. The procedure will usually involve:
 - 3.2.1. A full discussion of the situation with you at a meeting, including identification of any problems or difficulties being experienced by you and an exploration of possible causes of those problems or difficulties;
 - 3.2.2. The provision of help and assistance where appropriate and practicable to improve the situation;
 - 3.2.3. A full discussion of the possible consequences of their being insufficient improvement in your performance levels and/or your attendance levels;
 - 3.2.4. The provision of a reasonable amount of time to achieve the improvements we require; and
 - 3.2.5. A review of your progress.

- 3.3. At each stage of the procedure, where appropriate, we will consider whether the unsatisfactory performance and/or absence is related to a disability and, if so, whether there are any reasonable adjustments that could be made to assist you.
- 3.4. Where possible, we will try to deal with instances of unsatisfactory performance and/or attendance informally. Therefore, minor lapses from acceptable standards of performance may result in an informal, oral warning or reprimands. However, where the failure to perform is more serious, attendance is a serious cause for concern, or informal steps are not enough to bring your performance and/or attendance to a satisfactory level, formal action will be taken as described below.
- 3.5. All proceedings, whether formal or informal, should as far as is practicable remain confidential.
- 3.6. More formal action may result in three levels of action. Other than in extremely rare cases, you will not normally be dismissed for a first instance of poor performance or unacceptable absence. However, we reserve the right to take action at any level, or to skip levels, depending on the circumstances of the case.

4. Level 1: Improvement Notice

- 4.1. We will initially issue you an improvement notice. In cases of poor performance, this will include a performance improvement plan (PIP) we will seek to agree with you. The notice will usually give the following information:
 - 4.1.1. An explanation of the reasons for the improvement notice, the improvements in performance and/or attendance that are required and the timescale for making them (referred to as the review period);
 - 4.1.2. Any support we will provide to assist you;
 - 4.1.3. An explanation of the consequences of any repetition of the poor performance or failure to improve the performance to the required level as set out in the PIP or, in the case of an attendance improvement notice, an explanation of the consequences of failing to improve your attendance; and
 - 4.1.4. Advice as to your right to appeal against the decision to issue the improvement notice.
- 4.2. During the review period, your performance and/or attendance will be monitored and at the end of the review period, we will inform you of the next step. If we are satisfied that you have met the requirements set out in the PIP or the attendance improvement notice, no further action will be taken. If we are not satisfied, further action may be taken and/or where appropriate, the review period may be extended.
- 4.3. An improvement notice will normally remain in force for six months and a copy of the improvement notice will be kept on your personnel record. It will normally be disregarded for capability purposes after a period of six months, or any other period specified in the improvement notice, subject to satisfactory performance/attendance during that time, but will form a permanent part of your personnel record.

5. Level 2: Final Written Warning

- 5.1. If you fail to meet the requirements set out in the improvement notice, or where the poor performance or absence is sufficiently serious to warrant it, we may give you a final written warning, which, in the case of poor performance will include a PIP. It will give the information set out at paragraph 4.1 but will also state that any repetition of the poor performance or failure to improve your performance to the required level as set out in the PIP, or failure to improve your attendance levels, will render you liable to dismissal.
- 5.2. During the review period, your performance and/or attendance will be monitored and at

the end of the review period, we will inform you of the next steps. If we are satisfied that you have met the requirements set out in the PIP or attendance improvement notice, no further action will be taken. If we are not satisfied, further action may be taken and/or where appropriate, the review period may be extended.

- 5.3. The final written warning will normally remain in force for 12 months and a copy of the final written warning will be kept on your personnel record. The final written warning will normally be disregarded for capability purposes after 12 months, subject to satisfactory performance/attendance during that time.

6. Level 3: Dismissal or other sanction

- 6.1. If you fail to meet the requirements of the PIP or fail to improve your attendance as set out in the final written warning, dismissal will normally result. There may also be very exceptional circumstances where the failure to perform or absence is sufficiently serious to warrant dismissal without previous warnings.
- 6.2. You will be provided with written confirmation of the dismissal as soon as reasonably practicable afterwards. This will set out details of the reason for your dismissal, the date on which your employment terminated or will terminate, the appropriate period of notice or pay in lieu of notice (if any) and information on how to appeal against the dismissal.
- 6.3. If a sanction other than dismissal is to be imposed (e.g. demotion or a change in your duties), you will, as soon as is reasonably practicable, be provided with written confirmation of the action to be taken, how the action is to be implemented, the reason for it, the date on which it will come into force (if appropriate) and information about your right to appeal.

7. Capability meetings

- 7.1. Any capability meeting under this procedure will be convened by sending you a letter which will set out the date, time and place of the meeting, the nature of the issues to be discussed at the meeting in sufficient detail to enable you to prepare and respond appropriately, and will advise you of the possible consequences and of your right to be accompanied at the meeting by a companion. Where appropriate, we will enclose copies of relevant documents, for example your absence record, any medical report and any relevant policies.
- 7.2. You are entitled to be accompanied at any formal capability meeting (including any appeal hearing) by a fellow work colleague of your choice, or a trade union representative who meets the statutory requirements. Please note that it is your responsibility to secure the attendance of any fellow work colleague. You may not be accompanied by any other person, such as a relative, without our prior permission, or by a legal representative respond on your behalf to any views expressed at the hearing and confer with you during the hearing. Your companion does not have the right to answer questions on your behalf or prevent us from explaining our case. Any work colleague whom you have requested to accompany you will be given a reasonable amount of paid time off to prepare for and attend the meeting.
- 7.3. Your companion is entitled to address the meeting to put and sum up your case, respond on your behalf to any views expressed at the hearing and confer with you during the hearing. Your companion does not have the right to answer questions on your behalf or prevent us from explaining our case. Any work colleague whom you have requested to accompany you will be given a reasonable amount of paid time off to prepare for and attend the meeting.
- 7.4. You should make every effort to attend any capability meeting (including any appeal

hearing). If either you or your companion cannot attend on the proposed date for the meeting, you may suggest a reasonable alternative date, which must be within five working days of the date first proposed. This five-day time limit may be extended by mutual agreement between us. If you fail to attend any re-arranged meeting without good cause, we will be entitled to make a decision on the evidence available at the re-arranged meeting in your absence.

- 7.5. You will be given reasonable notice of the capability meeting. No decision will be made as to whether any capability action is to be taken or the nature of any capability action to be taken before the meeting takes place.
- 7.6. Where possible, the meeting will usually be heard and chaired as follows:
 - 7.6.1. Where action short of dismissal is being considered: the meeting will be chaired by a panel consisting of at least two Governors (excluding the staff or student Governors); or
 - 7.6.2. Where dismissal is a possible outcome: the meeting will be comprised of a special committee consisting of three Governors (excluding the staff or student Governors).
- 7.7. A member of the People Services department will usually be present at the meeting to take notes.
- 7.8. At the meeting, the panel will explain the purpose of the meeting, the issue to be discussed and go through the relevant documents. The panel will ensure that you fully understand the issues. You will have an opportunity to ask questions and comment on the issues and on the documents. You will be permitted to ask questions and present evidence.
- 7.9. The proceedings, any statements and all documents and records will be kept confidential.
- 7.10. The panel will have discretion to adjourn any capability meeting (including any appeal hearing) as appropriate on request or if he deems it necessary.
- 7.11. At the end of the capability meeting, the panel will normally adjourn before making a decision. Following the adjournment, the panel may issue an oral decision. If the panel is unable to reach an immediate decision following the meeting, they are entitled to deliberate before reaching a decision and notify you once they reach agreement. In any event, written notification of the outcome of the meeting will usually be sent to you within five working days of the meeting, or as soon as reasonably practicable, together with an explanation of any capability action to be taken and notification of your right to appeal.

8. Appeal

- 8.1. If you feel that action taken against you is wrong or unjust you should appeal against the decision by informing the Clerk of the Corporation, in writing, within five working days of receiving notification of the capability decision, specifying the ground(s) for your appeal. If you wish to produce additional evidence to support your case, then this must be provided to the Chair in advance of the appeal hearing.
- 8.2. Wherever possible, the appeal will be heard by an appeal committee. In so far as is reasonably practicable, the committee will not include any member of the Corporation who has been involved in the capability procedure so far. The committee shall not include the CEO & Principal, staff members or student members of the Corporation.
- 8.3. All appeals will be dealt with as promptly as possible. We will invite you to attend an appeal hearing. You have the right to be accompanied to the appeal hearing by a representative as outlined in the procedure set out above.
- 8.4. The appeal committee will confirm to you in writing the outcome of the appeal hearing, usually within five working days of the appeal hearing, or as soon as is reasonably practicable.
- 8.5. The appeal committee's decision will be final. There is no further right of appeal.