

Capability Procedure for all Staff (including Senior Post Holders)

1 Introduction

The Capability Procedure is part of the College's Performance Management Framework.

The Capability Procedure has been designed with an Informal Stage and a Formal Stage, to help employees maintain and improve performance.

The Capability Procedure is necessary in promoting fair and consistent treatment of employees and is designed to help resolve situations in which the performance of individual members of staff may persistently appear to be falling below the requirements of their job.

The Capability Procedure does not form part of employees' Terms and Conditions of Employment and may be revised at any time at the College's discretion, according to the needs of the College and / or changes in legislation.

2 Scope

This procedure will apply to all members of staff, including management up to and including the Principal / Chief Executive. In the case of under performance by the Principal / Chief Executive or other designated Senior Post Holders, the procedure will be managed by a Special Committee of the Governing Body.

Related Information

Where it appears, following investigation, that capability issues are wilful or deliberate, then the matters may instead be dealt with under the College's Disciplinary, Suspension & Dismissal Procedure.

If the underperformance is so serious as to cause unacceptable loss, damage or injury to the College business and / or any persons, or in cases of serious negligence / incompetency, or refusal to carry out duties or reasonable instructions to comply with College rules, then the matter will immediately be considered as a disciplinary matter and it will be dealt with under the College's Disciplinary, Suspension & Dismissal Procedure accordingly.

The Capability Procedure will:

- **Not** apply to the termination of employment on the grounds of permanent ill health - this is dealt with through a separate procedure.
- **Not** apply to staff who are in their contractual probationary period and do not reach the required standards of performance - this is dealt with through a separate procedure.

The nominated Line Manager who would normally handle the **Informal** Capability Procedure within their respective Faculty /Directorate or Service Area will be:

For cases involving curriculum staff:

- Vice Principals
- Assistant Principals
- Directors of Programme
- Associate Directors

For cases involving Business Support Staff:

- Vice Principals
- Assistant Principals
- Executive Directors
- Directors of Business Areas
- Heads of Service
- Supervisors

The nominated Senior Manager who would normally handle the **Formal** Capability Procedure will be:

- Deputy Principal
- Vice Principals
- Assistant Principals
- Executive Directors
- Directors of Programme.
- Directors of Business Support Areas.

There may be occasions when it is appropriate and necessary that the Senior Manager handling any Formal Capability Procedure does **not** work in the same Directorate / Service area as the employee, and in these cases, a full explanation will be given to the employee.

The name of the nominated Line Manager or Senior Manager will be confirmed on commencement of the Capability Procedure.

As detailed in Article 9 (4) of the Instrument & Articles of Government, the Principal / Chief Executive has delegated the function to chair a Dismissal Hearing to any member of the Senior Leadership Team.

The Principal / Chief Executive will chair an Appeal Hearing against dismissal.

3 Informal Stage

3.1 This Informal Stage applies to **all Staff**

(See 3.2 overleaf on arrangements for staff that undergo a Department Review including the observation of teaching & learning)

Where appropriate, the College will seek to resolve issues of capability on an informal basis without recourse to the formal Capability Procedure, and in such circumstances the Capability Procedure to be adopted will be as follows:

- a. An informal meeting should be arranged with the employee by their Line Manager in order to explain the nature of the concerns to the employee and to allow the employee to respond.
- b. If, at this meeting, all matters have been clarified and resolved, then no further action will be required.
- c. Alternatively, if concerns still exist following discussions with the employee, the Line Manager will convene a review meeting at which a Performance Improvement Plan (PIP) and / or a Cause for Concern Letter shall be agreed.
- d. The Performance Improvement Plan shall identify reasonable objectives to be achieved within a reasonable timescale. Save in exceptional circumstances, the likely timescale for improvement will be no more than **six** working weeks maximum ('the Improvement Period').
- e. If none of the agreed objectives have been achieved without reasonable cause, then the matter will progress to the Formal Stage of the Capability Procedure.
- f. If some but not all of the agreed objectives have been achieved without reasonable cause, then, at the Line Manager's discretion, either the Improvement Period may be extended or the matter will progress to the Formal Stage of the Capability Procedure. If the Improvement Period is to be extended, this will be for no more than a further **six** working weeks, save in exceptional circumstances. Any such extended Improvement Period will be subject to review on its conclusion, and if any of the agreed objectives have yet to be met without reasonable cause, then the matter will progress to the Formal Stage of the Capability Procedure.
- g. If the objectives are deemed to have been met on the expiry of the Improvement Period, then no further action will be taken.

An employee may be referred straight to the Formal Stage of the Capability Procedure at any time during, or instead of, the Informal Stage where a serious capability or incompetency issue is identified, or where there is deemed insufficient progress being made to address the Performance Improvement Plan.

Normally the stages of capability action, as set out in this procedure will be cumulative and, in most cases, the College will progress through each stage before moving to the next stage. However, the College reserves the right to implement the procedure at any stage if it considers that the employee's alleged capability matter is sufficiently serious.

The College may extend the duration of any warning given under this Capability Procedure where it considers this appropriate in the circumstances.

In its entirety, the Informal Stage should normally take no more than **twelve** working weeks to complete, unless there are exceptional circumstances, which will be agreed between the Line Manager and employee.

At any stage of the Informal or Formal Stage of the Capability Procedure, an employee may request to be re-deployed, and the College reserves the right to listen to such requests on a case-by-case basis.

3.2 Employees who undergo a Department Review, including the Observation of Teaching & Learning

The outcome of the Department Review Process will result in a quality judgement statement for each of the three Gold Standards

1. GS1 – Planning for Learning
2. GS2 – Assessment for Learning
3. GS3 – Managing Progress & Supporting Learning

The quality outcome for each Gold Standard can be a trigger for identifying under performance, and this is referenced in the Department Review Process Flowchart.

The four possible quality outcomes are:

1. Outstanding Practice (All 'Yes')
2. Full Confidence (3 'Yes' and 1 Partially Achieved)
3. Confidence with Minor Reservations (2 or more Partially Achieved)
4. Limited Confidence (Any 'No')

For the avoidance of doubt:

- An employee who does not achieve a minimum of 'Full Confidence' in each of the three quality judgements (*GS1, GS2 & GS3*) will receive dedicated Mentor support, and a Development Plan, which could be up to four weeks.
- If after completion of the Development Plan, the employee does not achieve a minimum of 'Full Confidence' in each of the three subsequent quality judgements (*GS1, GS2 & GS3*), an Initial Assessment Meeting will then be held.
- Should the employee not engage in the four-week Development Plan without any mitigating circumstances, the Deputy Principal reserves the right to hold an Initial Assessment Meeting prior to the end of the Development Plan period.

At the Initial Assessment Meeting, the Deputy Principal or a nominee will decide, based on the evidence detailed below, whether the employee:

1. Needs additional support, additional time and/or a further Development Plan.
2. Is issued with a Cause for Concern Letter and a Performance Improvement Plan (*Informal Stage*).
3. Enters the Formal Stage of the Capability Procedure.

The Initial Assessment Meeting will also take into account any mitigating circumstances that might be affecting the performance of the employee. Information that will be taken into account at the Initial Assessment Meeting may include, but is not limited to:

- Achievement Rates (including predictions).
- Retention Rates.
- Attendance Rates.
- Value Added.
- Student feedback.
- Previous and current Staff Appraisals.
- Overall Quality Judgement Statement during the Departmental Review including Schemes of Work, Marked Work & Feedback and Teaching & Learning Walkthroughs.

The employee will be informed of this decision either verbally or in writing.

4 Formal Stage

The Formal Stage of the Capability Procedure may be invoked where there has been:

1. No or insufficient improvement following the Informal Procedure.
2. Serious matters of incompetency.
3. Continual and / or persistent Quality Judgement Statements that do not result in "Full Confidence".
4. Lack of engagement in the four-week Development Plan.

In relation to the above points, the Deputy Principal or a nominee may consider alternative actions at the Initial Assessment Meeting, which may mean that the Formal Stage of Capability Procedure is not followed. The outcome of the Initial Assessment Meeting will be communicated to the employee, if applicable.

The Line Manager will refer the matter and any relevant evidence to an appropriate Senior Manager within their Faculty / Directorate / Service Area, if appropriate, and notify the employee accordingly.

The Senior Manager will determine whether an investigation is required, in consultation with Human Resources, and should an investigation be required, an Investigating Officer will be appointed.

The Nominated Investigating Officer could be, but is not limited to:

- A senior member of the Human Resources Team.
- A senior member of Curriculum Management.
- A senior member of Business Support Management.

Should an investigation be required, the Senior Manager will then arrange for an investigation to be carried out by an Investigating Officer, who will work to the time-scales set out in section 4.1.

The Investigation Officer will investigate the issues raised as they consider reasonable before recommending whether a Capability Hearing should go ahead.

The decision to progress to a Capability Hearing is at the discretion of the Senior Manager, and where applicable will include evidence in the Investigation Report and following advice from Human Resources.

4.1 Indicative Timescales

In the interest of ensuring that capability matters are resolved as speedily as possible, suggested time limits are set out in this procedure. These are provided for guidance only, and if it is not practicable to adhere to these time limits, they may be amended by the College at its discretion.

Description	Normal Timescales	Comment
Investigation	Within 10 working days.	If deemed appropriate.
Capability Hearing Date	Within 10 working days.	The 10 working days commences following the completion of the Investigation.
Capability Hearing Papers	Sent to all parties at least 5 working days before the Capability Hearing.	
Capability Hearing Outcome (verbal)	Verbal feedback of the Capability Hearing outcome within 2 working days of the Capability Hearing taking place.	This process may or may not be used and is at the discretion of the Chair of the Hearing.
Capability Hearing Outcome (Letter)	Written feedback within 5 working days of the Capability Hearing.	
Appeal	Appeal (<i>including Grounds for Appeal</i>) to be received by the Director of Human Resources within 5 working days of receiving the Outcome Letter.	
Appeal Hearing	Within 10 working days of the Appeal being received by the Director of Human Resources.	
Appeal Hearing Outcome (Letter)	Written feedback within 5 working days of the Appeal Hearing.	

4.2 Capability Hearing

A Senior Manager who has not been involved with any part of the investigation or the decision to proceed to a Capability Hearing, either at Stage 1, 2 or Dismissal Stage, will be appointed by Human Resources to chair the Capability Hearing.

Guidance for conduct of a Formal Capability Hearing is given in **Appendix 1**.

The employee who is subject to a Capability Hearing will be informed in writing of:

- The nature of the matter.
- The place, date and time of the Capability Hearing.
- The right to be accompanied and / or represented by a Trade Union Representative or workplace colleague.
- The potential outcome of the Capability Hearing.

This notification and all documentation will be sent to the employee within the time-scales set out in section 4.1.

The aims of a Capability Hearing will usually include:

- i. Setting out the required standards that the College believes the employee has failed to meet, and going through any relevant evidence that the College has gathered.
- ii. Allowing the employee to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- iii. Establishing the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement.
- iv. Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
- v. Where appropriate, discussing targets for improvement and a time-scale for review.

4.3 Stage One Capability Hearing - First Written Warning

Save if not reasonably practicable, a Stage One Capability Hearing will be convened within the time-scales set out in section 4.1 following the matter first being referred to a Senior Manager.

A decision will thereafter be reached and conveyed to the employee in writing, usually within the time-scales set out in section 4.1.

Following a Stage 1 Capability Hearing, if the College decides that the employee's performance is unsatisfactory, the following action may be taken:

- The employee may be informed that the complaint has not been upheld and no action will be taken.
- The employee may be informed that there is still a Cause for Concern, and a Cause for Concern Letter and an accompanying Performance Improvement Plan (if applicable) may be issued, with specific targets to be met. For the avoidance of doubt, the Cause for Concern Letter does not go on the employee's record.
- A **First Written Warning** may be issued, together with a Performance Improvement Plan (PIP), identifying a timescale within which specified objectives must be met, ('the Review Period').
- The length of the **Review Period** will normally be a minimum of **four** working weeks (unless intervention is needed within this period. The Review Period can be shorter and would not normally exceed twelve weeks. This can be extended to a maximum of twenty-four weeks in total at Senior Manager Discretion where there are extenuating circumstances.
- If the capability issue is in relation to staff who did not receive at least Full Confidence in their Quality Judgement Statement during the Department Review, the Review Period would normally be a maximum of **four** working weeks (unless intervention is needed within this period) unless agreed due to exceptional circumstances - this is at the discretion of the Senior Manager.
- During the Review Period, there will be regular monitoring of the "Performance Improvement Plan (PIP)" by the appropriate Line Manager.
- The Cause for Concern or First Written Warning will make it clear that the employee's continued employment is at risk if the specified objectives as detailed in the Performance Improvement Plan (PIP) are not achieved without reasonable cause.
- The **First Written Warning** will normally remain active for twelve months from the **end** of the Review Period.

The Review Period commences when the employee receives a letter informing them of the decision made and the accompanying Performance Improvement Plan.

4.4 Stage Two Capability Hearing - Final Written Warning

If the employee's performance does not improve within the Review Period, or if there is further evidence of poor performance while the employee's First Written Warning is still active, the College may decide to hold a **Stage 2** Capability Hearing.

A decision will thereafter be reached and conveyed to the employee in writing, usually within the time-scales set out in section 4.1.

Following a Stage 2 Capability Hearing, if the College decides that the employee's performance is unsatisfactory, the following actions may be taken:

- The employee may be informed that the complaint has been upheld and no further warning will be issued, but that the employee's performance will continue to be reviewed.
- The employee may be informed that there is still a Cause for Concern, and a Cause for Concern Letter, and an accompanying Performance Improvement Plan (if applicable) may be issued, with specific targets to be met. For the avoidance of doubt, the Cause for Concern Letter does not go on the employee's record.
- A **Final Written Warning** may be issued with a Performance Improvement Plan (PIP), identifying a timescale within which specified objectives must be met ('the Review Period').
- The length of the **Review Period** will normally be a minimum of **four** working weeks (unless intervention is needed within this period) and would not normally exceed twelve weeks and may be shorter, should it be deemed reasonable by the Senior Manager hearing the case. This can be extended to a maximum of twenty-four weeks in total at Senior Manager discretion.
- If the capability issue is in relation to staff who did not receive a minimum of Full Confidence in their Quality Judgement Statement during the Department Review, the Review Period would normally be a maximum of **four** working weeks (unless intervention is needed within this period) unless agreed due to exceptional circumstances - this is at the discretion of the Senior Manager.
- During the Review Period, there will be regular monitoring of the "Performance Improvement Plan (PIP)" by the appropriate Line Manager.
- The Cause for Concern or Final Written Warning will make it clear that the employee's continued employment is at risk if the specified objectives as detailed in the Performance Improvement Plan (PIP) are not achieved without reasonable cause.
- A **Final Written Warning** will normally remain active for twelve months from the end of the Review Period.

The Review Period commences when the employee receives a letter informing them of the decision made and the accompanying Performance Improvement Plan.

The employee's performance will be monitored during the Review Period, and the College will write to inform the employee of the outcome. If the employee's Line Manager is satisfied with the employee's performance, no further action will be taken.

If however, the Line Manager is not satisfied with the progress being made within the Review Period, then the matter may be progressed to a Stage 3 Capability Hearing, or if the Line Manager feels that there has been a substantial but insufficient improvement, the Review Period may be extended.

4.5 Stage 3 Capability Hearing - Dismissal or Redeployment

As detailed in Article 9 (4) of the Instrument & Articles of Government, the Principal / Chief Executive has delegated the function to chair a Capability Hearing, at which a decision may be made to dismiss an employee, to any member of the Senior Leadership Team.

The College may decide to hold a Stage 3 Capability Hearing, following guidance for the conduct of a Formal Hearing at **Appendix 1**, if it has reason to believe:

- The employee's performance has not improved sufficiently within the Review Period set out in a Final Written Warning (Stage 2).
- The employee's performance is unsatisfactory while a Final Written Warning is still active; or
- The employee's performance has been grossly negligent such as to warrant dismissal without the need for a Final Written Warning.

Following the Stage 3 Capability Hearing, if the College finds that the employee's performance is unsatisfactory, it may consider a range of options including:

- Dismissal.
- Redeploying the employee into another suitable job at the same or a lower grade, which will be for an agreed trial period and subject to meeting certain criteria of the redeployment opportunity. The trial period is at the discretion of the Chair of the Capability Hearing, but would be for a minimum of four weeks.
- Extending an active Final Written Warning and setting a further Review Period - this would be used only in exceptional cases where the College believes a substantial improvement is likely within the Review Period.

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to Gross Misconduct, in which case the College may dismiss without notice or any pay in lieu.

5 Appeals Against Action for Poor Performance

- 5.1 If the employee feels that a decision about poor performance under this Capability Procedure is wrong or unjust, the employee will be advised on how to appeal in the Capability Hearing Outcome Letter, and must also state their full grounds of appeal to the Director of Human Resources within the time-scales set out in section 4.1. If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful they will be reinstated with no loss of continuity of service or pay. The Principal / Chief Executive will hear an appeal against a dismissal.
- 5.2 An Appeal Hearing, other than against dismissal, will be convened, usually within the time-scales set out in section 4.1, and guidance for the conduct of a Formal Capability Hearing and / or an Appeal Hearing is given at **Appendix 1**.
- 5.3 The College will give the employee written notice of the date, time and place of the Appeal Hearing and this will be given within the time-scales set out in section 4.1.
- 5.4 The Appeal Hearing may be a complete re-hearing of the matter, or it may be a review of the fairness of the original decision in the light of the Capability Procedure that was followed and any new information that may have come to light. This will be at the College's discretion depending on the circumstances of the employee's case. In any event, the appeal will be dealt with as impartially as possible.
- 5.5 Where possible, the Appeal Hearing will be conducted by a more Senior Manager who has not been previously involved in the case.

If a Director or Assistant Principal has made the decision which is being appealed, then another Assistant Principal not involved in the previous stages or the Deputy Principal, or Vice Principal can hear the appeal.

If the Assistant Principal, Deputy Principal, and Vice Principal has heard the case, then the Principal / Chief Executive will hear the appeal, save in exceptional circumstances.
- 5.6 The employee may bring a Trade Union Representative or workplace colleague with them to the Appeal Hearing.
- 5.7 Following the Appeal Hearing the College may:
 - 5.7.1 Confirm the original decision.
 - 5.7.2 Revoke the original decision.
 - 5.7.3 Substitute a different penalty.
- 5.8 The College will inform the employee in writing of its final decision, usually within the time-scales set out in section 4.1, and there will be no further right of appeal.

Appendix 1

Notes for Guidance in the Conduct of a Formal Capability Hearing & Appeal

If the employee wishes to be accompanied and / or represented at the Capability Hearing, they will be required to advise the College of their recognised Trade Union Representative or whoever they have chosen as a companion in good time before the Capability Hearing, and at least five working days in advance.

If an employee's choice of companion is unreasonable, for example, if the College believes that the companion may have a conflict of interest, the College reserves the right to ask the employee to choose another companion.

The employee should make every effort to attend the Capability Hearing.

If the employee fails to attend a Capability Hearing without good reason, the College may proceed with the Capability Hearing in any event and make a decision in the employee's absence.

In other circumstances where it seems likely that, for a lengthy period, the employee will be unable to attend a Capability Hearing, the College reserves the right to proceed with the Capability Hearing, affording the employee the right to either submit written representations and/or be represented in their absence by a workplace colleague or Trade Union Representative.

Once all the parties have been assembled for the Capability Hearing and introductions made, the recommended procedure to be followed is:

- The precise nature of the problem or issue should be stated.
- The employee should be allowed to present his / her case.
- A period for general discussion should be allowed, during which both sides can ask questions and provide explanations of points which have been raised.
- The main points concerning the problems and the evidence provided by both sides should be summarised to ensure that nothing has been overlooked by their side.

If at any time the chair of the Capability Hearing considers that the matter requires further investigation, the Capability Hearing may be adjourned and a time and date agreed for it to be reconvened. Any further investigation should be completed as soon as possible after the adjourned Capability Hearing and (wherever possible) the Capability Hearing should be reconvened within ten working days, save in exceptional circumstances.

Before reaching a decision, in all but the simplest cases, the Capability Hearing should be adjourned to allow for consideration of all points raised, the past record of the employee and any extenuating circumstances, and any actions previously taken in similar cases.

The Investigating Officer and the Senior Human Resources Representative will usually be present throughout all formal Capability Hearings.