

**CAPABILITY POLICY & PROCEDURE**

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## 1. Introduction

- 1.1 This Capability Procedure shall apply to all staff except those staff in their probation period and those covered by the *Appendix to the College Charter and Statutes 2015* governing academic staff. The Probation Procedures and the Appendix to the Statutes are available for reference on the College intranet and from campus Human Resources Offices.
- 1.2 The Capability Policy & Procedure prescribes the College's policy on managing poor performance. Capability issues are problems arising where a member of staff is not sustaining the acceptable level of performance needed to meet the requirements of their role in terms of the quantity and quality of work, despite genuine effort. The full range and volume of activities that a member of staff normally undertakes, or is currently undertaking, will be taken into account where there are capability concerns in specific areas.
- 1.3 The College has separate procedures for managing issues of ill health, redundancy and scientific misconduct. Managers should refer to the [Sickness Absence Policy and Procedure](#), [Change Management Policy and Procedure](#) or [Scientific Misconduct for guidance](#). This Policy & Procedure does not apply to matters of discipline or misconduct, which are dealt with under the Disciplinary Policy & Procedure.
- 1.4 The College treats equality of opportunity seriously and has an equality framework that is applicable to staff in order to promote and ensure equality of opportunity. Implementation of this Policy & Procedure must be clear and transparent and not subject to any unfair discriminatory practices.
- 1.5 Line managers and supervisors are required to familiarise and understand this policy.

The College Trades Unions have been consulted on this document and it follows the principles established by the ACAS Code of Practice April 2009. The Capability Policy & Procedure will be reviewed periodically to ensure that they are effective.

## 2.0 Support framework

2.1 Line managers are expected to undertake their role in line with the Imperial Values and Behaviours. The College's [Values](#) are at the very centre of our work and guide our behaviour as a community, across all levels of the College. This policy aims to protect and promote our Values of Respect, Collaboration, Excellence, Integrity and Innovation. They should practice good people management to minimise the need to deal with unsatisfactory performance. For example:

- By providing accurate job descriptions and person specifications that enable capable people to be selected for vacancies.
- Through communicating the College's standards of behaviour, the requirements of their job description, and how they are expected to deliver these to new starters in their induction.

- Through management of the probationary period to enable line managers to develop the member of staff and to identify and resolve problems at an early stage.
  - By holding regular team and 1-2-1 meetings
  - By undertaking annual Personal Review and Development Plan (PRDP) meetings
- 2.2 The standards against which a member of staff will be assessed should be communicated by their line manager in accordance with the reasonable requirements of the post. If the member of staff is unsure of the required standard, they should discuss this with their line manager.
- 2.3 Where a line manager has concerns about a member of staff's performance, the line manager must in the first instance, discuss these with HR who will consider the issues and options for addressing these, such as through one-to-one discussion, mediation, coaching and training. Where any such steps are agreed, the action will be taken forward without attendance from Human Resources or Trade Union representatives. If it is judged that the concerns are such that they should be managed under the support section of this policy, HR will undertake a one-to-one briefing session with the manager to guide on the appropriate policies and support and advise the manager on how to discuss this with the member of staff. Following the discussion(s), the line manager will discuss their concerns with the member of staff informally, in line with the advice received, and will also provide the member of staff with the details of what support is available.
- 2.4 Where informal discussions are taking place with a member of staff who has disclosed a disability (as defined by the Equality Act 2010) and the concerns relate to their performance, then arrangements should be made to assess the impact of that disability upon the member of staff's role. An assessment should be made of any adjustments that might reasonably be put in place, in addition to any adjustments which have already been put in place since the member of staff disclosed their disability (where applicable).
- 2.5 Reasonable attempts will be made to resolve any problems and the arrangements will vary depending on the circumstances of each case. The line manager and member of staff will aim to agree objectives to address the problem and the manager will offer any reasonable support or training that would assist the member of staff in meeting the required standards.
- 2.6 The member of staff will be given reasonable time to improve and the period of review will be agreed at the meeting. This will vary based on the nature of the concerns, to ensure that the member of staff is given a reasonable opportunity to address these on an informal basis. Progress will be reviewed regularly during the informal review period, and feedback on progress will be given to the member of staff. Positive support and encouragement will be offered to the member of staff to help him or her meet the required standards of performance.

- 2.7 The line manager should prepare file notes of informal meetings which may contain (if appropriate) objectives that will address concerns raised, and details of the training and other activities which will support the meeting of the objectives. They should also contain details of the period of review. The file notes should be copied to the member of staff but not entered on his or her personal record.
- 2.8 If there is no (or insufficient) improvement following structured support, or in cases of alleged serious lack of capability to perform a role, formal action will be taken which may lead to the issue of written improvement notices or dismissal. It may be that during the course of an informal meeting or review a line manager considers that the matter warrants formal action (for example, if the member of staff refuses to do the job to the required standard). If so, the informal action will be terminated and an investigation started in accordance with the arrangements outlined below. A member of staff may also choose to request that the matter be dealt with formally.

### **3. First Formal Stage**

- 3.1 If the lack of capability to perform a role continues or the initial level of underperformance is sufficiently serious, the member of staff will be informed that a first formal performance review meeting will be scheduled at which a member of the Human Resources Division will be present. Where the member of staff is an official of a trade union, the relevant full-time regional officer of that trade union should be informed of the commencement of formal proceedings under this Policy. Performance review meetings are normally undertaken by the member of staff's line manager. However, at the outset of the process the member of staff has the option to request that Human Resources arranges for the case to be presented to an alternative manager, in which case an alternative manager may be appointed to the role (subject always to the discretion of Human Resources).
- 3.2 The Human Resources representative will convene the meeting in accordance with paragraph six of this Policy.
- 3.3 At the meeting, the line manager will either:
- Explain how the member of staff is not meeting the standards in their view required for the job and use specific examples to evidence their concerns.
  - Ask the member of staff if there are any factors that may be contributing to their level of job performance. If the member of staff has a disability, the line manager must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.
  - Discuss and agree with the member of staff any additional training or coaching support that will help him or her achieve sustainable performance improvements.

Or:

- The line manager will explain to the alternative manager and member of staff how the member of staff is not meeting the standards in their view required for the job and use specific examples to evidence their concerns.

- The alternative manager will ask the member of staff if there are any factors that may be contributing to their level of job performance. If the member of staff has a disability, the line manager and alternative manager must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.
  - The alternative manager will discuss and agree with both parties any additional training or coaching support that will help the member of staff achieve sustainable performance improvements.
- 3.4 Following the meeting, if the line manager or alternative manager decides that it is appropriate to do so, they will issue the member of staff with a first written improvement notice, an improvement action plan (that must be fully discussed and, wherever possible, agreed with both parties if the case is heard by an alternative manager) and the notes of the meeting. These documents should normally be issued within ten working days of the meeting.
- 3.5 The improvement action plan will:
- Outline specific, measurable and realistic work objectives with regular review periods.
  - List any developmental and support activities designed to support the member of staff to achieve the work standards.
  - Be applicable for a reasonable period decided in consultation with the member of staff.
- 3.6 The first written improvement notice will advise the member of staff:
- That failure to reach the performance standards required may result in the issue of a final written improvement notice.
  - Of their right to appeal.
  - The period to which the improvement notice applied.
- 3.7 If the member of staff's performance has improved sufficiently at the end of the review period, this will be acknowledged by the line manager and the member of staff advised in writing that no further action will be instigated and that the improvement notice will cease to be "live".

#### **4. Second Formal Stage**

- 4.1 If the lack of capability to perform a role continues, the line manager will convene a second formal performance meeting with the member of staff in accordance with paragraph six of this Policy. The member of staff has the option to request that Human Resources arranges for the case to be presented to an alternative manager, in which circumstances an alternative manager may be appointed (again subject always to the discretion of Human Resources).
- 4.2 The meeting will be conducted by either the line manager or alternative manager in accordance with paragraph 3.3. They will also raise with the member of staff possible adjustments to the role within the remit of the grade and the operational requirements.

- 4.3 Following the meeting, if the line manager or the alternative manager decides that it is appropriate to do so, they will issue the member of staff with a final written improvement notice in line with paragraph 3.6, an improvement action plan in accordance with paragraph 3.5 (that must be fully discussed and, wherever possible, agreed with both parties if the case is heard by an alternative manager) and notes of the meeting. These documents should normally be issued within ten working days of the meeting.
- 4.4 If the member of staff's performance has improved sufficiently at the end of the improvement action plan review period, this will be acknowledged by the manager and the member of staff advised in writing that no further action will be instigated and that the improvement notice will cease to be "live".

## **5. Third Formal Stage**

- 5.1 If the lack of capability to perform a role continues, the line manager will advise the member of Human Resources Division to convene a formal capability review hearing in accordance with section six of this Policy.
- 5.2 At the capability hearing, the line manager will describe to the person(s) hearing the case the work standards expected of the member of staff and explain how the member of staff's work has fallen short of the standards required. The line manager will also describe the measures that have been taken to support the member of staff to improve their performance.
- 5.3 The member of staff or the representative may offer an explanation for any of the points raised.
- 5.4 After hearing all the evidence and representations the following options are available to the person(s) hearing the case:
- Extend the improvement action plan review period.
  - Possible adjustments to the role within the remit of the grade and the operational requirements.
  - Redeploy the member of staff to alternative work on the same grade or a lower grade and pay with the agreement of the member of staff.
  - Dismiss the member of staff, with appropriate notice, on grounds of the lack of capability.
- 5.5 The written decision of the panel will be provided to the member of staff, any representative and to the line manager, usually within ten working days of the meeting.

## **6. Notification, Representation and Recording of Formal Meetings**

- 6.1 All members of staff will receive five working days' written notification of any formal meeting convened under the capability procedure. The notification will include:

- The date, time and venue of the meeting.
  - Details of all attendees at the meeting, including any witnesses.
  - Copies of any documentation that will be considered at the meeting.
  - A copy of the capability procedure.
  - The potential outcome of the meeting, i.e., issue of a first or final written improvement notice, or dismissal.
- 6.2 Where a member of staff has a disability then arrangements for a formal hearing should include consideration of any requirements for reasonable adjustments.
- 6.3 Where a member of staff has difficulty understanding written or spoken English then appropriate accommodations should be made.
- 6.4 The member of staff has a right to be accompanied by a work colleague or a trade union representative. Where the member of staff's representative is unavailable to attend the original hearing date, one postponement will be allowed for an alternative date within five working days of the original date.
- 6.5 The Human Resources representative will arrange for notes to be taken at all formal meetings and a copy will be provided to the member of staff following the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the Hearing papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.
- 6.6 The covert recording of informal or formal meetings, e.g. by use of a mobile phone or other recording device will not be permitted, and will result in disciplinary action.

## **7 Grievance**

- 7.1 If a member of staff raises grievance issues during the course of the capability procedure, the Human Resources representative will review the grievance, discuss the matter with the member of staff and/or his or her representative, and will decide how the grievance should be considered.
- 7.2 As a guide, where the grievance constitutes a response to the allegations under investigation then the member of staff's comments will be considered as part of the formal hearing but should where possible be decided before the substantive allegations are raised. Where the grievance is unrelated to the substance of the capability procedure, Human Resources may decide the appropriate course of action is for the case to be reviewed separately under the Grievance Procedure.

## **8 Right to Appeal**

- 8.1 A member of staff has the right to appeal against any formal action taken against them under this Policy.

- 8.2 A member of staff wishing to appeal against any formal action taken against them under this Policy should do so within ten working days of receipt of the written notice of the action being communicated to them.
- 8.3 The appeal notice, which must be in writing, must specify the reason(s) for the appeal.
- 8.4 ***Appeals against extension of the action plan, adjustments to the role or redeployment*** will be heard by a senior line manager with a member of Human Resources, both of whom will have had no previous involvement in the case. ***Appeals against dismissal*** will be heard by a College panel consisting of three members of the College not previously involved in the case, with a Human Resources representative present as Secretary to the Appeal Panel. A member of staff has a statutory right to be accompanied at the appeal hearing by either a Trades Union representative or work colleague. All appeal hearings will be convened as soon as practicable.
- 8.5 If new evidence is introduced during an appeal hearing it may be referred back to the original formal hearing in order that they may review the capability sanction. The appeal hearing may be reconvened in the event that the member of staff does not accept the subsequent decision of the original hearing.
- 8.6 Appeal hearings will be conducted in accordance with the following terms of reference:
- To review whether the matter under consideration was adequately investigated and substantiated;
  - To review whether the College's procedures were correctly and fairly implemented;
  - To consider whether the capability action was reasonable in the circumstances known to management at the time of the hearing.
- 8.7 In the event that an appeal panel decides to reinstate a member of staff who has been dismissed then this will be done in a manner which maintains continuous service and without loss of pay (assessment will be made of any income received by the member of staff while not in College employment).
- 8.8 The College regards the appeal decision as final.

## **9. Capability and Ill Health**

- 9.1 A member of staff's capability to carry out their role to the required standard may be affected by their health and level of absence from work. In such circumstances, it may be more appropriate to manage the matter under the [Sickness Absence Policy and Procedure](#).
- 9.2 Line managers must bear in mind the provisions of the Equality Act 2010, in particular the obligation to make reasonable adjustments when supporting members of staff with a disability.
- 9.3 Throughout the capability procedure, the work of the member of staff will be considered in the light of any adjustments that have been agreed by their line manager.



## 10 Key Roles and Responsibilities

Individual responsible	Role/Responsibility
<b>Informal action:</b>	
Manager	Practice good people management, including meeting with staff regularly to discuss work issues and to offer advice on work related matters in an attempt to avoid issues arising. To comply with the informal procedure set out in the policy, including making reasonable attempts to resolve any problems in an informal manner and giving reasonable time for improvement where relevant. Ideally managers will address/pre-empt issues before they escalate.
Member of staff	Seek help and advice from manager(s) on work related matters when necessary and listen to advice given by managers. Staff have an obligation to inform their manager if they do not understand the advice given.
HR	Discuss and consider with managers their performance concerns regarding a member of staff and, where it is identified that the issue should be managed informally undertake individual training with, managers. Maintain regular contact during the structured support period and review correspondence sent to individuals. Make contact with the individual to make them aware of what support is available. Assure the member of staff of confidentiality.
<b>Formal action:</b>	
HR	<p>i) An HR representative not involved in case will, on request, explain the procedure to individual who is the subject of the investigation.</p> <p>ii) Carry out their designated role at any meetings/hearings, including support of the manager (Chair) and provision of administrative support (note taking). Send any written communication, as set out in the procedure, in a timely manner.</p>
Trade Union/work colleague	Offer support and assistance to individuals and attend hearings in the capacity outlined in policy
Investigating Officer (normally member of staff's manager)	Carry out investigation and based on the evidence received, make a recommendation of no action, further action or training needed.
Member of Staff	Prepare for and attend any meetings/hearings convened. Provide a written response to the allegation

Trade Union/work colleague	Offer support and assistance to individuals and attend meetings/hearings in the capacity outlined in policy
Manager	Carry out their designated role at any meetings/hearings. Confirm any action to individual as directed by the procedure, in line with timescales outlined in the policy
Witnesses	Attend any meetings/hearings to answer questions put to them and confirm statements previously given and to maintain confidentiality in relation to the matter.