

Academic Staff Capability Regulation

Policy Category:	Human Resource
Subject:	Procedures related to capability
Approving Authority:	SMT
Responsible Officer:	President & Principal
Responsible Office:	Human Resources Directorate
Related College Policies:	Academic Staff Disciplinary Regulation
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1. General Principles

- 1.1. This Regulation is made pursuant to the College's Ordinance Relating to Dismissal, Grievance Procedures and Related Matters for Academic Staff.
- 1.2. This Regulation applies to all academic staff, i.e. employees of the College who have the title of 'Lecturer', 'Senior Lecturer', 'Reader' or 'Professor'. It does not form part of any contract of employment. It may be amended at any time and the procedure may be departed from if appropriate, including during an employee's probationary period.
- 1.3. The purpose of this Regulation is to assist employees in reaching and maintaining the required standards of performance and to ensure that if employees have failed to do so, a fair and systematic procedure is followed to help them improve.
- 1.4. If there is a performance concern in which ill health may play a part but is not the overriding cause of the performance concern, this Regulation may be utilised.
- 1.5. If, during the procedure outlined in this Regulation, the College decides that it would be more appropriate to deal with the matter under another regulation or policy, the College may follow the procedure under the alternative regulation or policy at an appropriate stage. It will not be necessary for the College to start at the beginning of the alternative regulation or policy. The employee will be notified accordingly.
- 1.6. The responsibility for capability matters for Clinical Lecturers, Clinical Senior Lecturers, Clinical Readers and Clinical Professors will normally follow the lines of accountability set out in the employee's contract of employment, clinical addendum and job description i.e. the College as the university employer will lead on matters arising under the substantive contract and the honorary NHS employer and, if appropriate the relevant regulatory authority will lead on matters arising under the honorary contract.
- 1.7. It is the responsibility of heads of departments, line managers and supervisors to ensure employees are aware of the standards of performance expected of them and where possible agreed.
- 1.8. Whilst action taken under this Regulation is primarily intended to identify and help rectify poor or inadequate performance, dismissal may also be an outcome.

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- 1.9. The College aims to treat performance issues sensitively and with respect for the privacy of those concerned. All staff must treat as confidential any information communicated in connection with a matter which is the subject of this Regulation.
- 1.10. Records will be kept of any procedures carried out under this Regulation and may be referred to in future if necessary.
- 1.11. Failing to attend a meeting or hearing, failing to cooperate with the procedure or making false or malicious allegations under this Regulation may be treated as misconduct.

Meetings (including hearings)

- 1.12. Meetings under this Regulation will usually take place in person but they may be conducted by phone or other technology, or by written questions if necessary as determined by the chair of the meeting.
- 1.13. The chair of a meeting will be responsible for ensuring there is appropriate HR support and a note taker present if necessary. Meetings should not be recorded without the permission of the chair.¹
- 1.14. If the employee (or their companion where applicable) becomes unable to attend a meeting, they must inform the chair of the meeting, or the relevant HR representative, immediately.
- 1.15. Meetings under this Regulation may go ahead in the absence of the employee or their companion (if applicable) if:
 - 1.15.1. the employee or their companion fails to attend a meeting without good reason; or
 - 1.15.2. the meeting has already been rearranged and it is not reasonable to rearrange it again.

The right to be accompanied

- 1.16. The employee may bring a companion (either a work colleague or a trade union representative) to capability hearings and appeal hearings. The employee must inform the chair of the hearing, or the relevant HR representative, of the identity of any companion not later than three working days before the hearing. The companion may confer with the employee and address the hearing on behalf of the employee but may not answer questions on behalf of the employee.
- 1.17. If the employee's chosen companion is unavailable to attend the hearing on the first notified date, the employee may request a postponement and suggest an alternative date which is within five working days of the date originally notified. If it is not possible for the companion to attend on the alternative date, the employee must attend the rearranged hearing without a companion or choose an alternative companion.
- 1.18. It is the employee's responsibility to notify the companion of the details of the hearing including the date, time and location of the hearing and any relevant documentation relating to their case.

Suspension

¹ [Use of recording devices](#)

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- 1.19. Employees may, in certain circumstances, be suspended either in full or in part from some or all activities pending a decision in relation to their capability. Suspension will require authorisation from the Director of Human Resources, their nominee or a more senior person if necessary.
- 1.20. Suspension is not a disciplinary sanction but a means by which to facilitate a full investigation being carried out in order to determine whether a hearing is required.
- 1.21. When an employee has been suspended:
 - 1.21.1. they may not attend the College's premises or have contact with staff, students or funding bodies without express written permission from the person who authorised the suspension, or their nominee, but must be readily contactable and available to work if requested;
 - 1.21.2. their access to the College's systems and their College email account may be suspended;
 - 1.21.3. in certain circumstances, it may be necessary to notify other members of staff that an employee has been suspended, and why;
 - 1.21.4. they will be paid in accordance with their contract of employment;
 - 1.21.5. they will be given reasons for the suspension; and
 - 1.21.6. their suspension will be kept under review (normally on a fortnightly basis).
- 1.22. If an employee holds an honorary NHS contract and is suspended, the Director of Human Resources and/or Medical Director of the relevant NHS Trust will be informed.

2. Performance Expectation Plan and capability meeting

- 2.1. Managers are expected to attempt to resolve concerns about an employee's performance informally by discussing the concerns with the employee, usually as part of the performance development review, and supporting the employee in addressing them before initiating the procedure set out below.
- 2.2. If the concerns have not been resolved informally, or if the concerns are of a more serious nature which the employee's line manager considers should be dealt with under this formal procedure, the employee will be required to attend a capability meeting, normally with the manager responsible for their performance.
- 2.3. The invitation to a capability meeting will:
 - 2.3.1. identify the areas of concern about the employee's performance;
 - 2.3.2. enclose a copy of this Regulation;
 - 2.3.3. give the employee a minimum of five working days' notice of the meeting;
 - 2.3.4. invite the employee to provide any documents they want to be considered no later than three working days before the scheduled date of the meeting; and

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- 2.3.5. invite the employee to provide a written statement (if they wish to provide one) about the performance concerns no later than three working days before the scheduled date of the meeting.
- 2.4. At the capability meeting:
 - 2.4.1. the manager will explain their concerns about the employee's performance and discuss what support and training could help to address them;
 - 2.4.2. the employee will be invited to comment on the performance concerns and may refer to any written statement provided under paragraph 2.3.5 above; and
 - 2.4.3. the employee and the manager should discuss how the employee could improve their performance and the appropriate review period (if any).
- 2.5. After the meeting, the manager will:
 - 2.5.1. make any additional enquiries or request any additional information about the employee and the performance concerns; and
 - 2.5.2. inform the employee in writing within a reasonable timeframe of the meeting whether a Performance Expectation Plan (**PEP**) is required and if so, provide a draft PEP.
- 2.6. A PEP will set out:
 - 2.6.1. the performance concerns;
 - 2.6.2. the expectations for improvement;
 - 2.6.3. the support and/or training to be provided to help the employee to meet the expected standards of performance; and
 - 2.6.4. the length of the review period (not usually less than one month).
- 2.7. The employee will have five working days to make any comments on the draft PEP. The manager will consider any comments, requests or suggestions made by the employee and decide whether the PEP should be updated to reflect them.
- 2.8. The manager should monitor the employee's performance throughout the review period.
- 2.9. At the end of the review period the line manager will review progress against the PEP. If insufficient progress has been made, a capability hearing will be convened under section 0 below.

3. Capability hearing

- 3.1. When a capability hearing is required, the manager will appoint a suitable colleague to form a panel with them for the capability hearing. The manager should take advice from Human Resources on the appointment.
- 3.2. As soon as practicable after the end of the review period, the employee will be invited to a capability hearing. The invitation to the hearing will:
 - 3.2.1. enclose a copy of the PEP and any other relevant documents;
 - 3.2.2. if the manager believes the employee may not have met the expectations for improvement, state which expectations may not have been met;
 - 3.2.3. give the employee a minimum of five working days' notice of the hearing;
 - 3.2.4. invite the employee to provide any documents they want to be considered no later than three days before the scheduled date of the hearing;
 - 3.2.5. invite the employee to provide a written statement (if they wish to provide one) about their performance during the review period no later than three days before the scheduled date of the hearing; and
 - 3.2.6. if it is the case, state that a potential outcome of the hearing is dismissal.
- 3.3. At the capability hearing:
 - 3.3.1. the manager will explain any expectations for improvement the manager believes the employee has not met and discuss whether any further support or training could help to meet them;
 - 3.3.2. the employee will be invited to comment on their performance and may refer to any written statement provided under paragraph 3.2.5 above; and
 - 3.3.3. the employee and the manager should discuss how the employee could improve their performance and the appropriate review period (if any).
- 3.4. The panel will make a decision and inform the employee of the outcome of the capability hearing in writing, usually within ten working days of the hearing. The usual outcomes of a capability hearing are:
 - 3.4.1. cessation of the PEP if the panel decides that the performance concerns have been addressed to their satisfaction or that no further action is required;
 - 3.4.2. the issuing of a first capability notice or a final capability notice and the setting of a new or adjusted PEP if the performance concerns have not been addressed to the satisfaction of the panel;
 - 3.4.3. outcomes falling short of dismissal including demotion or the removal of some responsibilities; or
 - 3.4.4. dismissal. This will not normally be the outcome of a capability hearing if the employee has not been issued with at least one capability notice. However, the

panel should consider dismissal if the employee has been issued with a final capability notice.

3.5. A capability notice (whether first or a final) will state:

- 3.5.1. the performance concerns that have not been met;
- 3.5.2. the expectations for improvement and whether any improvement has been shown;
- 3.5.3. whether the panel believes dismissal should be considered if the performance concerns are not met within the next review period; and
- 3.5.4. the length of time for which the capability notice will remain active (normally six months for a first capability notice and twelve months for a final capability notice). After the active period, the capability notice will remain permanently on the employee's file but will be disregarded in deciding the outcome of any future capability procedure.

4. Appeals

4.1. An employee may appeal the outcome of a capability hearing on one or more of the following grounds:

- 4.1.1. the outcome was unreasonable;
- 4.1.2. there was a failure of procedure that led to the wrong outcome being reached;
- 4.1.3. information has arisen which was not available at the time which may have led to a different outcome; or
- 4.1.4. the expectations under the PEP were unreasonable.

4.2. An employee who wishes to appeal against an outcome of a capability hearing should do so in writing to the Director of Human Resources (or the next most senior person if necessary) within ten working days of receipt of the outcome, setting out the grounds of their appeal in full. Appeals should be typed in an ordinary font size and spacing and should not be longer than five A4 pages.

4.3. The Director of Human Resources or their nominee will, normally in consultation with the employee's line manager, appoint an appeal manager or an appeal panel, normally of up to three members of staff and, if an appeal panel is appointed, select one of the members to act as chair. An appeal panel may include a person external to the College (e.g. an NHS Trust Representative). Where possible, the appeal manager or the chair of the appeal panel will be more senior than the manager who chaired the capability hearing and the appeal manager or members of the appeal panel will not previously have been involved in the case. The appeal will not usually take the form of a re-hearing of the evidence (unless the appeal manager or the chair of the appeal panel determines, in their absolute discretion, that this is necessary to properly dispose of the appeal).

4.4. The appeal manager or the chair of the appeal panel will arrange an appeal hearing and invite the employee to attend to present their case.

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- 4.5. At the appeal hearing, the appeal manager or the appeal panel will discuss the employee's appeal. Witnesses may be called only with the permission of the appeal manager or the chair of the appeal panel. The employee will be invited to make representations.
- 4.6. The appeal manager or the chair of the appeal panel will prepare a written outcome stating whether, in full or in part, the original outcome is upheld, dismissed or varied. The outcome is final.
- 4.7. If an appeal against dismissal is allowed, the employee will be reinstated with no loss of continuity of service or pay, unless the outcome is to overturn the dismissal and apply an outcome falling short of dismissal which results in a loss of pay.