

## **Plumpton College**

### **CAPABILITY POLICY AND PROCEDURE**

#### **1. Scope of the Procedure**

- 1.1 This policy and procedure applies to all members of staff other than “senior post holders” as defined in the College’s Articles of Government.
- 1.2 New members of staff who are within their probationary period will be managed in accordance with the College’s Probationary Policy and Procedure which provides for alternative arrangements for dealing with issues of underperformance.
- 1.3 This policy and procedure is not intended for use in situations where there is a deliberate failure by the member of staff to perform to the standards of which they are capable. Failure to perform to the required standards through negligence, lack of effort or insubordination is viewed as misconduct and is dealt with under the College’s Disciplinary Procedure.

#### **2. Introduction**

- 2.1 The success of the College depends upon effective contributions from all staff. Performance incapability refers to an individual member of staff’s ability to perform the work expected of them to required standards.
- 2.2 The College affirms that the vast majority of its staff meet or exceed the demands of their respective roles. Problems can and do arise and this procedure is intended to provide a framework for dealing with them in a fair, supportive and consistent way.
- 2.3 All staff will be made aware of the standards that are expected of them and any rules applying to them, this will be carried out through staff training and the induction process.
- 2.4 This policy will be used consistently and objectively. Employees will not be discriminated on the grounds of sex, transgender, marital or civil partnership status, racial group, nationality, sexual orientation, religion or belief disability or age, in relation to action taken in response to any performance issues.

#### **3. General Principles**

- 3.1 The College has a responsibility to ensure that managers using and operating these procedures have the necessary training, skills and support.
- 3.2 Line managers should seek the advice of the HR Officer prior to initiating any formal action under this procedure.
- 3.3 The expectation is that at every stage of the procedure, short of dismissal, continued efforts will be made to support an individual to improve performance through a mixture of monitoring, support advice/training.

- 3.4 An employee has the right to be present and accompanied and represented by a representative of a trade union or workplace colleague of his or her choice at any stage of the formal procedure. When arranging meetings a check will be made whether the employee has any family, religious or other cultural events which might influence the date of the meeting.
- 3.5 In the interest of ensuring that capability matters are resolved as quickly as possible, time limits are given for appropriate stages in this procedure. These are for guidance. If it is not practicable to adhere to these time limits, they may be amended, ideally by mutual agreement. Due regard will be given to the personal circumstances of all parties involved in the procedure.
- 3.6 No action will be taken against a representative of a recognised trade union until, with the permission of the representative, the circumstances of the case have been discussed with the full-time official of the trade union concerned, except in the case of gross misconduct, where circumstances may require immediate action. Should the member of staff not wish his or her trade union official to be involved, the procedures set out below will be followed without further delay.
- 3.7 The proceedings of, and any information relating to the implementation of this procedure, shall remain confidential to all parties at all times. Records will be treated as confidential and kept in accordance with the College's policy on Data Protection.

#### **4 Qualifications**

- 4.1 Employees are responsible for their continued professional development. Where an employee no longer has the correct qualifications to continue to perform his/her duties, the line manager will consider whether adjustments can be made to existing duties so that employment can continue.
- 4.2 Where the qualification in question is fundamental to the employee's duties and he/she can not continue without them, the line manager will consider whether the employee can be moved to another position. The line manager in consultation with the Principal will also give consideration to whether the employee can be returned to his/her original duties, once the qualifications have been regained.
- 4.3 Once all attempts to amend the employee's existing duties or to find alternative duties within the organisation have been exhausted, it may as a last resort become necessary to dismiss.

#### **5 Incapability**

- 5.1 Incapability may arise from a number of factors, including:
  - Lack of aptitude, skill or experience
  - inability to perform at correct level or standard
  - persistent failure to comply with college procedures and regulations
  - Personal/family difficulties
  - Bereavement
  - Short term health problems

- Reorganization or redefinition of role
- Absence of facilities crucial to the employee's performance
- Lack of proficiency and poor overall organization
- Changes in the nature and allocation of work, including heavy workload
- Poor attendance at work related to genuine ill health

This list is neither exhaustive nor exclusive.

- 5.2 If it becomes clear that an employee is not performing his/her duties to the required standard due to a lack of knowledge, skill or ability, the line manager will arrange a meeting with the employee to discuss the matter. The line manager will then decide whether to use the informal or formal procedure.

## **6 Summary of the stages of this procedure**

- 6.1 The stages of this procedure are:

### Informal Process

Investigation of problem, identification of causes and provision of guidance/advice/adjustments, where applicable.

### Formal Process

Stage 1: First Written Warning

Stage 2: Final Written Warning

Stage 3: Dismissal

- 6.2 The stages in the procedure would normally be taken sequentially but there may be instances where it would be clearly inappropriate to follow each stage. In such circumstances, the individual may be given just one opportunity to improve performance, or summary dismissal under grounds of gross incompetence may be considered.

## **7 Informal Procedure**

- 7.1 The informal procedure should be handled as part of normal line management discussions with the member of staff.
- 7.2 Where there is evidence of significant problems with performance it is very important to address the situation at the earliest opportunity. There is an obligation on those managing staff to provide support that offers an individual a genuine opportunity for improvement within a timescale that takes account of the context of the problem, the individual concerned and the needs of the College. Measures which may prove helpful include advice, guidance, coaching training or supervision.

## **8 Formal Procedure**

- 8.1 Where, following the informal stage above, the employee's performance has not improved to the required standard, or improvement has not been maintained, the formal process may be invoked.

## 8.2 Stage 1 – First Written Warning

8.2.1 A Stage 1 capability meeting will normally be conducted by a Head of Department or Line Manager.

8.2.2 A letter will be sent to the member of staff, at least 5 working days before the capability meeting, informing them:

- that the member of staff's performance is to be addressed through the Capability Procedure, a copy of which is enclosed with the letter
- that the member of staff is required to attend a Stage 1 capability meeting at a specified date, time and location
- of the details supporting the concern that the member of staff's performance has fallen below the level required in the role
- of the right to be accompanied by a single companion
- who will be present at the meeting
- that notes will be taken, normally, by the Human Resources Officer

8.2.3 The purpose of the meeting will be to discuss with the member of staff:

- the specific concerns
- the views of the member of staff
- the standards required
- constructive ways in which progress can be achieved including agreed options for training, mentoring, coaching etc.
- the setting and agreeing of SMART targets (SMART stands for specific, measurable, attainable, realistic and timescales)

8.2.4 Expected outcomes of the meeting are to identify, clearly and fairly, the job requirements and the ways in which the member of staff is considered to be under-performing/achieving against these.

8.2.5 The Head of Department/Line Manager will have due regard to all circumstances affecting performance, including:

- induction, training and development needs
- any personal factors affecting performance
- changes in the management, duties or supervision of the person concerned
- length of time in post
- experience relevant to the post

8.2.6 The member of staff will have the opportunity to express their reaction to the criticism of their performance and/or put forward any evidence or facts for consideration.

8.2.7 Possible causes of the problem(s) should be identified and discussed. Unless it becomes clear that there are no issues of competence or something is revealed which is best addressed more appropriately under another procedure, then consideration should be given to an agreed programme of support, further training or development. Realistic and measurable targets or

standards and dates for meeting these targets or standards should be set and monitored closely.

8.2.8 Where a capability warning is given, the member of staff will be formally notified in writing within 5 working days of the meeting. The letter will detail:

- the date of the meeting
- the details of the performance issues
- that a formal warning has been given and the supporting reason(s)
- the improvement(s) required of the member of staff detailed in the agreed programme of action including agreed time periods
- the Stage 1 review date
- the consequences of not achieving the improvements

8.2.9 A copy of the capability warning and the date that it was given will be placed on the member of staff's file, normally for 12 months. (Note: it is the responsibility of the person giving the warning to ensure that the note is removed from the employee's file at the appropriate time or for elevating the matter to the next stage.)

8.2.10 At the end of the agreed time period the Head of Department/Line Manager will arrange a Stage 1 review meeting with the member of staff to consider progress against the plan of action agreed at the initial Stage 1 meeting and to evaluate any improvement in performance.

8.2.11 Following an exchange of views the Head of Department/Line Manager will decide whether:

- no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained for a period of 12 months from the date of the review meeting otherwise the next stage of the procedure will be invoked
- to review and adapt the action plan and/or extend the period for improvement if there is a legitimate and genuine reason, and set a further review date or
- to progress to Stage 2 of the Capability Procedure, usually because there has been no improvement or because progress falls short of what was required

8.2.12 Whatever the outcome, the member of staff will receive written notification of the outcome of the meeting within 5 working days.

### 8.3 Stage 2 – Final Written Warning

8.3.1 A Stage 2 capability meeting will normally be conducted by a member of the Senior Management Team.

8.3.2 A letter will be sent to the member of staff, at least 5 working days before the capability meeting, informing them:

- that they are required to attend a Stage 2 capability meeting at a scheduled date, time and location

- of the details supporting the concern that the member of staff has fallen below the level required for the role
- of the right to be accompanied by a representative of a trade union representative or work place colleague
- who will be present at the meeting
- that notes will be taken, normally, by a Human Resources representative

8.3.3 The purpose of the meeting will be to discuss:

- the specific concerns raised at Stage 1 and to evaluate the member of staff's performance against targets and standards agreed at the Stage 1 meeting
- the member of staff's views on how matters have progressed
- the standards required and
- constructive ways in which progress can be achieved, including options for training, mentoring, coaching etc.

8.3.4 The manager who conducted the Stage 1 meetings will be called upon to give details of their concerns and the steps that have been taken with the member of staff to date.

8.3.5 Having heard the case put forward by both sides, the Senior Manager will decide on the way forward, which could include:

- retaining the current action plan, but extending the review period to allow the member of staff additional time for improvement, if it is felt that this expectation is reasonable or
- devising a new action plan, taking account of the member of staff's response, with a further review period

8.3.6 Where a final written capability warning is given, the member of staff will be formally notified, within 5 working days. The letter will detail:

- the date of the meeting
- the details of the performance issues
- that a formal warning has been given and the supporting reason(s)
- the improvement(s) required of the member of staff detailed in the agreed programme of action including agreed time periods
- the Stage 2 review date
- the consequences of failing to achieve and sustain the required level of improvement, that is, the termination of employment being considered.

8.3.7 A copy of the final written capability warning will be placed on the member of staff's file. It will normally remain on the file for 18 months.

(Note: it is the responsibility of the person giving the warning to ensure that the note is removed from the employee's file at the appropriate time or for elevating the matter to the next stage.)

8.3.8 At the end of the agreed time period the Senior Manager will arrange a Stage 2 review meeting. This meeting parallels the previous stage but includes the possibility of progressing to Stage 3, of this procedure.

8.3.9 Prior to a decision the Senior Manager will be satisfied that:

- the procedure has been properly followed
- that the member of staff has had a reasonable opportunity to improve
- that support and training has been offered where appropriate
- that options such as redeployment have been considered and have been rejected or are not feasible
- that there is no underlying medical condition/reason affecting performance

8.3.10 Following an exchange of views the Senior Manager will decide whether:

- no further action is required because the required improvement has been achieved and there is reasonable confidence that this will be sustained for a period of 12 months from the date of the review meeting, otherwise the next stage of the procedure will be invoked
- to review and adapt the action plan and/or extend the period for improvement if there is a legitimate and genuine reason, and set a further review date or
- to progress to Stage 3 of the Capability Procedure, usually because there has been no improvement or because progress falls short of what was required

8.3.11 Whatever the outcome, the member of staff will receive written notification of the outcome of the meeting within 5 working days.

#### 8.4 Stage 3 – Dismissal

8.4.1 Where the required improvements set out as part of the final written warning issued at Stage 2 of this procedure have not been achieved during the monitoring period, or improvement has not been maintained during the warning period, the member of staff will be given notice, in writing, to attend a formal meeting at Stage 3 of this procedure.

8.4.2 A Stage 3 capability meeting will normally be conducted by the Principal with the HR officer normally in attendance.

8.4.3 A letter will be sent to the member of staff, at least 5 working days before the capability meeting, informing them:

- that they are expected to attend a Stage 3 meeting at a scheduled date, time and location
- that incapability has given rise to the hearing
- the right of the member of staff to be accompanied and/or represented by a colleague or trade union representative
- that notes will be taken, normally, by the Human Resources Officer
- that an outcome of the meeting could be dismissal

8.4.4 If the person accompanying the member of staff cannot attend on the proposed date, the member of staff should propose an alternative date for the hearing within five working days of the date of the first scheduled hearing.

- 8.4.5 The purpose of the meeting will be to discuss:
- the specific concerns raised at Stage 2 and to evaluate the member of staff's performance against targets and standards agreed at the Stage 2 meeting
- 8.4.6 The Senior Manager who conducted the Stage 2 meeting will be called upon to give details of the concerns and the steps taken with the member of staff to date.
- 8.4.7 Prior to a decision to terminate employment, the Principal will be satisfied that:
- the procedure has been properly followed
  - that the member of staff has had a reasonable opportunity to improve
  - that support and training has been offered where appropriate
  - that options short of dismissal such as redeployment have been considered and have been rejected or are not feasible
  - that there is no underlying medical condition/reason affecting performance
- 8.4.8 Having heard the case put forward by both sides, the Principal will decide on the way forward, which could include:
- retaining the current action plan, but extending the review period to allow the member of staff additional time for improvement, if it is felt that this expectation is reasonable
  - dismissal on the grounds of capability
- 8.4.9 In retaining the action plan, the member of staff will be informed, in writing within 5 working days of the meeting, of the further improvements required before the end of the next review period, and that failure to achieve and sustain the required level of improvement could result in the termination of employment being considered.
- 8.4.10 A copy of the final written capability warning will be placed on the member of staff's file. It will normally remain on the file for 18 months.

(Note: it is the responsibility of the person giving the warning to ensure that the note is removed from the employee's file at the appropriate time or for elevating the matter to the next stage.)

## **9 Dismissal Procedure**

- 9.1 Where the Principal considers that the appropriate sanction is dismissal, the member of staff will be informed of this at the hearing and written confirmation will be sent to the employee within five working days of the hearing.
- 9.2 The dismissal letter will specify:
- (a) the details of the incapability dealt with at the hearing and such detail of events leading to the dismissal as is appropriate
  - (b) the rights of and timescales for appeal as set out in section of these procedures

(c) when the dismissal takes effect.

9.3 The dismissal should normally take effect at the end of the contractual or statutory period of notice (whichever is greater).

## **10 Non-attendance at a Stage 1, 2 or 3 Meeting or Hearing**

10.1 If a member of staff fails to attend a hearing, those conducting the hearing will contact the member of staff to ascertain the reason for his/her absence and will decide whether to proceed in his/her absence or reconvene the hearing at some other time. If the member of staff is absent for a valid reason which could not reasonably have been foreseen, the hearing should normally be rearranged once, usually within five working days. If the member of staff cannot be contacted or if no valid reason can be produced, the employee will be treated as absent without leave and the meeting will proceed in their absence and a decision reached. The decision will be made from the evidence available at that time. The employee will be informed of the decision in writing within five working days of the hearing.

## **11 Appeals against dismissal or notice of dismissal**

11.1 An employee who wishes to appeal against dismissal or notice of dismissal should inform the Clerk to the Corporation in writing within 14 days of the date of the decision which forms the subject of the appeal.

11.2 The employee should state in the letter his/her grounds of appeal. (e.g. the appeal is against the nature of the penalty awarded, against the procedure used or that new evidence has come to light).

11.3 The appeal will be heard by a committee established by the Corporation and consisting of any three members of the Corporation, excluding the Principal, the staff members and the student members. Where the appeal is heard by a committee of the Corporation, the Principal shall attend that hearing if so requested by the committee.

11.4 The appeal hearing will take place as soon as reasonably practicable after the notice to appeal has been received by the Clerk to the Corporation. The employee will be given at least five working days' notice of the date, time and place fixed for the appeal hearing (unless an earlier date has been mutually agreed).

11.5 At the appeal hearing, the employee will be given an opportunity to state his or her case and will be entitled to be accompanied and represented by the trade union representative or workplace colleague of his or her choice. The employee should advise the Clerk to the Corporation of the names and status of such persons as least two days before the hearing. The Corporation committee appointed to hear the appeal shall take into account any representations of the employee and the Principal's decision to dismiss, and take such action as it considers appropriate. The decision will be notified to the employee and to the Principal in writing without unreasonable delay. Wherever possible an oral decision will be given on the day of the hearing.

- 11.6 The employee and Principal should provide a written summary of the case and reasons for decisions to the Clerk to the Corporation at least five working days before the hearing, together with copies of any evidence to be used at the appeal hearing. The Clerk will pass copies of these to the employee, Principal and Appeals Committee.
- 11.7 During the hearing the employee may request an adjournment at any stage, at the discretion of the Appeals Committee. The Committee may adjourn the hearing to another date if it sees fit. The Committee may proceed with the hearing if the employee fails to attend.
- 11.8 In the case of an appeal against a notice of dismissal, the dismissal shall not take effect before the appeal has been determined.

Approved by the Corporation on 24<sup>th</sup> March 2009