

ROYAL COLLEGE OF ART

Capability Procedure (for non-academic staff)

1. Purpose and scope

- 1.1 The success of the Royal College of Art (“the College”) depends upon an effective contribution from each member of staff. The College recognises that the vast majority of its staff meet or exceed the demands of their respective roles, however, unsatisfactory performance can and does arise. This procedure provides a framework for dealing with poor performance in a fair, supportive and consistent way.
- 1.2 This procedure applies to all directly employed non-academic staff who have completed their probationary period¹.
- 1.3 For the purposes of this procedure, “capability” refers to an individual’s ability to perform the work expected of them to the required standards. This may be assessed by reference to their skills, qualifications, aptitude, health or any other physical or mental quality. In certain circumstances, lack of qualification may also be considered under this heading.

2. Principles

2.1 Informal resolution

Steps will be taken to resolve issues on an informal basis where possible and without recourse to the formal stage of this procedure. In all cases, consideration will be given to providing support to enable the member of staff to meet the standards required.

2.2 Responsibilities

It is the responsibility of each line manager to manage the performance of their staff, to address performance issues as soon as they arise and, where a shortfall has been identified, manage it in a supportive way. This procedure is not intended to replace normal, day-to-day management activities in relation to supporting and monitoring staff performance and will not apply during the probationary period².

- 2.3 Staff have a contractual responsibility to achieve and maintain a satisfactory level of performance. As such, staff have a responsibility to bring to the attention of their line manager as soon as possible, any work-related problems or other circumstances which may hinder their ability to perform their duties.

2.4 Right to be accompanied

Staff who are the subject of this procedure have the right to bring with them to any formal meeting either:

- a colleague who works for the College; or

¹ For staff within their probationary period, the Probation Policy will apply.

² For staff within their probationary period, the Probation Policy will apply

- a trade union representative (local or full-time official)

2.5 Timescales

Whilst every effort will be made to comply with the timescales set out in this procedure, consideration of the complexity or specific circumstances of each case may necessitate an extension to timescales. In such circumstances the member of staff will be informed of the reason for the delay.

2.6 Written Communication

All written communication referred to in this procedure is either by letter or email.

3. Relationship to disciplinary policy and procedure

- 3.1 This procedure exists to effectively manage matters relating to unsatisfactory performance. Where poor performance is due to a failure to maintain adequate standards of behaviour, the disciplinary policy and procedure will apply. However, there may be cases where it is difficult to distinguish at the outset between conduct and capability issues. The College reserves the right to deal with matters under whichever procedure it deems appropriate, considering the circumstances and the information available at the time.

4 First instance of poor performance

- 4.1 In most cases, dismissal because of a failure to perform to the required standard would not normally take place unless the member of staff has received warning(s) and an opportunity to improve. However, where a member of staff commits a single significant error, or a number of substantial errors which are attributable to incompetence or inability to meet the required standards of the job, and the actual or potential consequences of that error are, or could be, extremely serious, warnings may not be appropriate. In such situations, this procedure allows for suspension of the member of staff and the earlier stages of the procedure omitted.

5. Informal process

- 5.1 The purpose of the informal process is to bring concerns to the attention of the member of staff, explore causes, identify responsibilities and agree actions to be taken. Informal meetings and discussions should highlight:
- The nature of the concerns
 - The expected standards of performance
 - Any necessary actions required to be carried out by the employee or manager to aid improvement
 - Any timescales for improvement and review dates
 - The potential consequences of not achieving the required improvements in performance
- 5.2 Where there are concerns about an employee's performance, the line manager will meet with the staff member to discuss the issues, using factual examples and allowing the staff member an opportunity to provide an explanation. The line

manager shall explore any potential causes, including work environment, work systems or personal circumstances which may have contributed to the poor performance.

- 5.3 The meeting should be an open two-way discussion which provides the member of staff with the opportunity to offer their perspective and discuss any concerns, difficulties or training and development needs they may have.
- 5.4 The line manager may offer advice and guidance to the staff member or provide coaching, if appropriate.
- 5.5 For minor cases of poor performance, the informal meeting is normally sufficient in bringing about the desired improvement. The line manager should confirm the outcome of the discussion in writing to the member of staff and retain any notes of the discussion that took place.
- 5.6 Where it is evident that a period of review is necessary, a development plan should be drawn up so that the member of staff is clear of the standard required, what actions are required, over what period and when and how the situation will be reviewed. The member of staff should be given a copy of the development plan.
- 5.7 At the end of a review period, a meeting should be held by the line manager with the member of staff, at which a comprehensive review of the situation should take place. If, at the review meeting, it is established that the appropriate level of performance has been achieved, this should be communicated to the member of staff in writing, clarifying that the appropriate level of performance must be sustained.
- 5.8 Following a satisfactory outcome of the informal process, the matter is normally considered resolved.
- 5.9 The line manager may feel that an informal (oral) warning would be appropriate. This being the case, the line manager should highlight the poor performance and provide clear instructions on the improvements required within a prescribed timetable, setting clear objectives and any development/training needs. The member of staff should be made aware that failure to meet the required level of improvement could lead to action under the formal part of this procedure. The informal warning will typically remain active for 6 months. The line manager will confirm in writing what has been decided.
- 5.10 Where further instances of poor performance occur or where the poor performance is repeated, and/or it is clear that an informal approach is not bringing about the desired improvement, the formal capability procedure should be invoked.

6 Suspension

- 6.1 There may be instances where suspension (with pay) is necessary while investigations are carried out. For example, in cases of serious neglect of duty or

where there are risks to a member of staff, students or to the College's reputation or property. In such cases, the College will decide if suspension is appropriate and will send written confirmation of the suspension to the member of staff.

- 6.2 Suspension is a neutral act; it is not an assumption of guilt and is not considered a disciplinary sanction. Normally the aim of suspension is to ensure that individuals and members of staff are protected and/or to ensure that a fair investigation is carried out. The period of suspension will be as short as possible, normally lasting no longer than fifteen working days. In exceptional circumstances where suspension exceeds this time limit or continues until the matter is fully resolved, the member of staff will be informed as to the reasons and the progress. Suspension will be paid at the person's normal rate of pay.
- 6.3 The authority to suspend is obtained from the pro-rector (operations) or the director of human resources.

7 Formal stage

- 7.1 The formal stage of the capability procedure is appropriate if:
- a) informal attempts to resolve the problem have proved unsuccessful; or
 - b) if the member of staff has previously received a warning under the formal stage of this procedure which is still current at the time of the poor performance concerned; or
 - c) if an instance of poor performance is sufficiently serious to warrant the formal stage of the capability procedure being invoked.

8 Capability hearing procedure

- 8.1 The member of staff will be written to inviting them to attend a capability hearing at least five working days before the hearing. The letter will contain sufficient information about the alleged poor performance to enable the member of staff to prepare to respond at the hearing. The letter will include details of the time of the capability hearing, the venue, and will enclose a copy of this capability policy and procedure together with copies of any written evidence, including witness statements. The member of staff will also be advised of their right to be accompanied to the hearing by a trade union representative or a colleague currently employed by the College.
- 8.2 During a formal hearing convened under this procedure, the person accompanying the member of staff may put forward and sum up the member of staff's case, question witnesses, respond on behalf of the member of staff and confer with the member of staff, but cannot answer questions on the member of staff's behalf.
- 8.3 The member of staff should provide the relevant human resources manager with any documentary evidence they wish to submit at least two working days in advance of the hearing.

- 8.4 Where the College or member of staff intends to call relevant witnesses, a day's advance notice shall be given on either side of their intention to do so.
- 8.5 At the capability hearing, the chair (who will normally be the line manager or an appropriate senior member of staff) will introduce those present, explain how the meeting will be conducted and explain that the purpose of the meeting is to consider whether formal action should be taken in accordance with this procedure.
- 8.6 A human resources manager is normally present at the hearing to take notes and provide guidance.
- 8.7 The chair will clearly outline the areas in which the individual's performance is alleged to be below expectations, explain the grounds for this view and refer to relevant evidence.
- 8.8 The member of staff will have the opportunity to present their case, cite any mitigating circumstances and answer any allegations that have been made. The member of staff will be given reasonable opportunity to ask questions and present evidence.
- 8.9 The chair may ask questions of all relevant parties.
- 8.10 Should new facts emerge at the hearing, the chair-person may deem it necessary to adjourn to have these investigated and reconvene the hearing when the investigation has been completed.
- 8.11 At the end of the hearing, the chair will summarise the main points of the discussion to allow both parties to be reminded of the nature of the alleged performance, the arguments and evidence put forward and to ensure nothing has been missed. The chair will check that the member of staff has nothing further to add.
- 8.12 Before reaching a decision, it may be necessary to adjourn the hearing, in order to allow time for reflection and proper consideration of the discussion that has taken place. This adjournment may also allow for any further checking of any matters raised, particularly if there is any dispute over facts.
- 8.13 A written record of the hearing will be available to all parties, which is not normally a verbatim record. If there is any disagreement over this account, details will be added to the record. Electronic recording is not permitted.

- 8.14 Normally the decision will be communicated to the member of staff in writing with reasons within five working days with the member of staff's right of appeal outlined in the letter.

9 Appeal

- 9.1 If the member of staff wishes to appeal against the outcome of a formal capability hearing under section 7 above they should write to the director of human resources outlining their reason(s) within ten working days from the date of receipt of the letter in 7.13. The director of human resources will designate an appropriate senior member of staff to hear the appeal. The member of staff hearing the appeal should not normally have had any previous involvement in the matter.
- 9.2 The appellant will be invited to attend an appeal hearing giving a minimum of at least five working days' notice in advance of the hearing.
- 9.3 At the appeal hearing the appellant will have the opportunity to outline:
- any new information that was not available at the time of the original hearing; and/or
 - any complaints of a failure in the original decision-making process e.g. a failure to follow procedures or a failure to provide a fair hearing.
- 9.4 The appeal hearing will be of a similar format as the capability hearing. The chair of the capability hearing will attend.
- 9.5 Normally appeal decisions will be confirmed in writing, within five working days of the meeting, outlining the College's final response. The outcome of the appeal may:
- uphold the original decision and confirm the original outcome;
 - substantially confirm the original decision but substitute a new outcome; or
 - override the original decision

10. Outcomes of the Capability procedure

- 10.1 Where the outcome of the hearing is a reasonably held belief that poor performance has occurred, a decision will be made as to what action is justified, depending on all the circumstances of the case. The actions which may be applied are as follows:
- 10.2 **Stage one - first written warning**
- The member of staff will be provided with the reason for the warning, in writing, and the improvement in performance required. If appropriate, the member of staff will be offered extra training and/or support. The member of staff will be given specific timescales for improvement and will be advised of the implications should the required standard of performance not be achieved.

A record of the written warning will remain active on the member of staff's personal file for twelve months, after which time it will be considered expired.

10.3 **Stage 2 - Final written warning**

A final written warning will be considered where: -

- a) a member of staff's performance fails to improve having already been given a first written warning. Under these circumstances demotion or transfer to another position may also be considered, dependent on the individual case; and/or
- b) a member of staff's performance is of sufficient concern to warrant only one written warning. In cases of this nature, the College may issue a final written warning, without having previously issued a first written warning.

The member of staff will be provided with the reason for the final written warning and informed of the action required to reach a standard of performance that is acceptable to the College. The member of staff will also be reminded that if the required standard is not achieved, or if there is further poor performance, then this could lead to dismissal. If appropriate, the member of staff will be offered extra training and/or support. The member of staff will be given specific timescales for improvement.

A record of the written warning will remain active on the member of staff's personal file for twelve months, after which time it will be considered expired.

10.4 **Stage three – dismissal**

Dismissal will be considered where:

- a) a member of staff's performance fails to improve having already been given a final written warning; and/or
- b) where serious neglect of duty is alleged or serious negligence which causes unacceptable loss, damage or injury (and after such investigation as is appropriate in the circumstances)

In all cases of dismissal, the notification will include:

- the reason(s) for dismissal;
- the date at which the employment is terminated;
- the right to appeal.

10.5 **Dismissal with notice**

The member of staff will receive the appropriate period of notice, or at the College's discretion, pay in lieu of notice, plus any outstanding holiday and any other allowances due up to the termination date.

10.6 Dismissal without notice

If a member of staff is dismissed for gross negligence they will be dismissed summarily, i.e. with immediate effect and with no entitlement to notice or pay in lieu of notice.

10.7 Decision to dismiss

Authority to dismiss lies with members of the senior management team (see appendix 2). Notification of the decision to dismiss should be communicated to the director of human resources.

12. Repeated poor performance

- 12.1 There may be occasions where a staff member's performance is satisfactory throughout the period a warning is in force, only to lapse very soon thereafter. Where a pattern emerges, the employee's capability record will be borne in mind in determining the level of warning warranted.

13. Failure to attend meetings

- 13.1 Where there are occasions when a member of staff is repeatedly unable or unwilling to attend a meeting, the College will consider the circumstances of each case and come to a reasonable decision on how to proceed. Where a member of staff continues to be unavailable to attend a meeting, the College may conclude that a decision will be made on the evidence available. Where this is to be the case, the member of staff will be informed.

14. Confidentiality

- 14.1 All parties involved in this procedure shall ensure that they maintain, as appropriate, the confidentiality of the process within and outside the College.

15. Trade unions

- 15.1 Where a trade union representative is the subject of this procedure beyond the informal stage, the appropriate regional trade union official will be informed.

16. Relationship to the grievance policy and procedure

- 16.1 If a member of staff raises a grievance during the capability process, it may be appropriate to deal with both issues concurrently or deal with one before the other.

The final decision about such matters rests with the director of human resources.

Human Resources
August 2015

Appendix 1

Authority to act for each stage of the capability procedure

Postholder	Suspension	First written warning stage	Final written warning stage	Dismissal	Appeals
Directors	Pro-Rector/ Director of Human Resources	Pro-Rector	Pro-Rector	Pro- Rector	Rector
Heads of Department	Pro-Rector/ Director of Human Resources	Director	Director	Director/ Dean	Pro Rector
Senior managers above grade 10	Pro-Rector/ Director of Human Resources	Heads of Department	Heads of Departments/ Directors	Director/ Dean	Pro-Rector
Staff up to grade 10	Pro- Rector/ Director of Human Resources	Line Manager	Line manager/ Heads of Department	Director/ Dean	Pro-Rector