



POLICY AND PROCEDURE	Staff Capability Policy
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Other Documents Policy Refers to

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History of amendments

Date	Version/Pages/Sections affected	Summary of changes

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1. Policy Statement

- 1.1 This policy and procedure has been developed in conjunction with the trade unions/professional organisations to reflect best practice and relevant employment legislation including the Employment Rights Act 1996, the Human rights Act 1998, the Employment Relations Act 1999, the Data Protection Act 1998 and the Equality Act 2010.
- 1.2 It is the aim of Ayrshire College to ensure that all members of staff are treated in a fair and equitable manner. Members of staff are required to perform the duties of their post to an acceptable standard. Where this standard is not met members of staff will be offered support, encouragement, guidance and, if necessary, training to improve their work performance. However, a distinction must be drawn between inherent incapacity and a lack of performance that is attributable to a willful refusal to work satisfactorily. The latter is a matter of conduct and will be dealt with under the Staff Disciplinary Policy.
- 1.3 Where a member of staff's lack of performance is related to a capability issue, the primary objective must be to assist and support the member of staff to improve to the required standard and every effort must be made to support the member of staff to remain at work. The reasons for the unacceptable performance require to be identified and an appropriate course of action jointly agreed to improve the performance. Attempts to produce the required improvement may include discussions, supported improvement, training, referral to independent counselling or occupational health, or consideration of alternative employment. Following this process, if all options have been exhausted and no improvement in performance is seen, dismissal for lack of capability may be considered.
- 1.4 Nothing in this policy and procedure, however, is intended to prevent the normal process of supervisory control where managers allocate work, monitor performance and quality, review progress, identify areas of deficiency and, as importantly, highlight work done well. This ongoing day-to-day process may include informal assistance in achieving improvement to the required standard. Much of this ongoing process will be carried out in conjunction with the Personal and Professional Development Review (PPDR) process.

Such discussions are not part of the formal Capability Procedure and therefore, formal interviews and representation are not appropriate to this everyday ongoing process.

2. Equality Statement

The College is committed to advancing and promoting equality and diversity in all of its activities and aims to establish an inclusive culture free from discrimination and based upon the values of dignity and respect.

3. Scope

- 3.1 This policy and procedure applies to all Ayrshire College Staff.

4. Definitions

- 4.1 The Employment Relations Act (ERA) 1996 states that "capability (is) assessed by reference to skill, aptitude, health or any other physical or mental quality". It also indicates that "incapability must relate to the work or the kind of work that the employee was employed by the employer to do". This must be determined in accordance with the member of staff's current contractual obligations.
- 4.2 This policy and procedure is designed to deal with those cases where the member of staff is lacking in some area of knowledge, skill or ability resulting in a failure to be able to carry out the required duties to an acceptable standard. This would include adherence of all relevant professional standards.
- 4.3 The procedure is to be used where there is a genuine lack of capability, rather than a deliberate failure on the part of the member of staff to perform to the standards of which they are capable. In the event of a deliberate failure by the member of staff, reference to the Staff Disciplinary Policy would be more appropriate.

4.4 A genuine lack of capability may come about for a variety of reasons including the following:

- Ill health;
- Poor and/or irregular attendance at work;
- Personal circumstances;
- Qualifications e.g. loss of driving licence, if essential to undertake the duties of the post;
- Lapse or loss of registration or professional qualifications;
- Changes in the operating environment or external markets;
- Gaps in current knowledge or skills

4.5 The procedure outlined in this policy will assist in dealing with capability issues associated with any of the above.

5. Aims of Policy

5.1 This policy will ensure that capability issues are managed in a fair and consistent manner. The policy provides:

- Assistance to members of staff to improve performance wherever possible when such deficiencies exist;
- Fair and consistent means of dealing with capability problems without recourse to the disciplinary policy.

5.2 In order to achieve the aims of the policy, the following principles and values are required:

- The management of capability should always be consistent with respect for the member of staff as an individual and should respect the diversity of staff;
- Early intervention when poor performance is identified should be encouraged enabling a supportive approach to be taken.

- 5.3 It is anticipated that any support, assistance, encouragement and direction undertaken under this policy should result in the member of staff being able to maintain and sustain the required level of performance following the end of the review period. Where this is not the case, the matter may be progressed onto the next stage of the policy.
- 5.4 If a member of staff should become disabled during their employment with the College, every effort will be made to retain the member of staff in their original job, where it is possible to make reasonable adjustments. If it is not possible to retain the member of staff in their original job, then the College will consider redeployment of the member of staff to an alternative post considered suitable to the altered circumstances of the member of staff.

6. Responsibilities

- 6.1 All managers within the College are responsible for communicating and applying this policy within their specific areas of line management. Guidance, support and assistance will be provided by Human Resources.
- 6.2 All managers will provide clear and specific information and guidance to staff to assist them to perform their duties effectively. Staff must also be made aware by line managers of the standards expected of them and where expectations change or evolve over time. The College's PPDR process will support these functions.
- 6.3 All members of staff have a responsibility to perform their duties to an acceptable standard and they should be given reasonable support and encouragement to do so.

7. Procedure

7.1 Representation

7.1.1 At all stages of the formal procedure, a member of staff is entitled to have a representative present. It will always be made clear in advance to the member of staff (and representative if relevant) that the capability rather than the staff disciplinary procedure is being used. However, representation is not a requirement at the informal stage.

7.2 Informal Approach

7.2.1 This procedure is not intended to prevent the normal management processes of monitoring performance and capability and highlighting to members of staff where they have performed well or have failed to meet the minimum standards. Managers will also ensure that all staff have received the necessary training, guidance and support required to undertake their duties, through the College's professional and personal staff development process.

7.2.2 As soon as capability or performance issues are identified, this should immediately be discussed between the member of staff and the line manager. In many cases, an informal conversation between the manager and a member of staff will be sufficient to address the matter. Formal action is appropriate where the informal approach has not resulted in the necessary improvement in performance or in more serious cases.

7.2.3 As a guideline, the initial informal discussion may comprise the following elements (advice is available from Human Resources):

- Indicators that the member of staff is not achieving the minimum standards of performance.
- Complaints about, or criticisms of the member of staff's work from colleagues, students or service users.
- Any patterns of evidence to indicate inadequate performance such as poor results or poor/irregular attendance.

- The manager's own observation of the member of staff which indicate possible concerns in relation to the member of staff's performance.

7.2.4 The aim of the informal discussion is to ascertain whether the member of staff accepts that there is a problem and if so, if they will respond positively to constructive support and assistance to improve their performance. The manager must constantly bear in mind that the aim is to assist the member of staff to improve to an acceptable standard.

7.2.5 The manager should:

- Encourage the individual to describe the situation from his/her perspective; through the use of open-ended and non-negative questions (e.g. how, what, why, when, where); whilst ensuring that all questions are answered fully
- Support the member of staff to elaborate on generalities that may conceal details of the problem;
- Identify possible contributing factors, e.g. relationships with colleagues, fears of inadequacy / failure, lack of promotion, insufficient training, domestic/health reasons;
- Avoid censure;
- Shape the discussion so that relevant issues are identified, contributing factors highlighted and where possible, solutions and review period discussed and agreed. A written summary of the meeting should be agreed with the member of staff and set out how improvements will be measured and achieved. The written summary should be retained and the member of staff provided with a copy.

7.2.6 If, following the agreed review of the member of staff's performance, there has been inadequate or no improvement, a more formal approach may require to be adopted.

7.3 Formal Process

7.4 Stage 1

7.5 Approach

7.5.1 Where a member of staff is failing to perform to an acceptable standard despite having been given initial, informal guidance and support a meeting will be arranged between the line manager and member of staff. The member of staff will be given at least five working days' notice of the meeting. The written confirmation of the meeting from the manager will include:

- the procedure and stage being used;
- clear details of the alleged shortfall in performance;
- all necessary supporting documentation;
- details of any informal discussion so far;
- the right to be accompanied
- the HR representative involved in the meeting.

7.5.2 The purpose of this meeting will be to discuss and agree the following:

- the performance improvement which is required and how it will be measured;
- an action plan for addressing the performance issues with an agreed timescale for improvement;
- timescales for review of performance against the action plan;
- the support the College will provide to assist with the member of staff's improvement;
- the action which may follow if the required improvement in performance is not achieved.

7.5.3 During this meeting the member of staff will be advised of the deficiencies which have been identified and of the improvement in work standard which is required. The member of staff should be given the opportunity to answer these points and to explain any difficulties which

they may be having. A discussion should take place to identify the methods by which the desired improvement may be achieved.

7.5.4 Attendance Review Meetings within the Promoting Attendance Policy constitute the first formal stage of the Capability Procedure.

7.6 Outcome of meeting

7.6.1 The outcome of this meeting will be formally recorded in a letter to the member of staff from the manager within 5 working days, where possible, of the meeting. The letter will include:

- the areas where performance is unsatisfactory;
- the improvement(s) required;
- an agreed action plan to achieve improvement underpinned by regular monitoring meetings;
- timescale for improvement with date for overall review;
- details of the support the College will provide to assist with the member of staff's improvement; details of the right of appeal and the possible actions that may be taken if the necessary improvement is not achieved.

7.6.2 If, at the agreed review date, the desired improvement has been achieved, the member of staff will be advised of this. This will also be recorded and the member of staff will be given written confirmation within seven calendar days of the review.

7.7 Stage 2

7.8 Approach

7.8.1 If, at the overall review of Stage 1, the desired improvement has not been achieved, a further meeting with the member of staff will be arranged. The timescales, format and purpose will be as detailed in Stage 1.

7.8.2 In addition, the support measures previously identified will also be reviewed and there will be discussion as to whether they should continue or if additional measures may be helpful. The member of staff will again be given the opportunity to respond to the points made and provide any other relevant information.

7.8.3 It may be felt appropriate at this stage to discuss formal career counselling or whether a permanent redeployment would be possible, and, if so, an agreeable option for the member of staff. If this is an agreed possibility, the Human Resources representative will be responsible for investigating the options. Where there is redeployment to a post on a lower grade, the new post would not normally attract protection but would normally be subject to the salary, terms and conditions applicable to the new post. Clear notice would be given to the member of staff to allow for a period of financial readjustment.

7.9 Outcome of Meeting

7.9.1 The outcome of this meeting will be formally recorded in a letter to the member of staff from the manager within seven calendar days, where possible, of the meeting. The letter will include:

- the areas where performance is unsatisfactory;
- the improvement(s) required;
- an agreed action plan to achieve improvement underpinned by regular monitoring meetings;
- time-scale for improvement with the date for overall review;
- details of the support the College will provide to assist with the member of staff's improvement;
- details of the right of appeal (see section 8);
- a failure to achieve the necessary improvement within the agreed timescale will result in consideration of termination of employment on the grounds of capability

7.9.2 If, at the agreed review date the desired improvement has been achieved the member of staff will be advised of this. This will also be recorded and the member of staff will be given written confirmation within five working days of the review.

7.10 Stage 3

7.11 Approach

- 7.11.1 If, despite all of the measures outlined above, the desired improvement has still not been achieved, the matter will be referred to the appropriate member of the Executive Management team. The notice and information will be as stated at stage 1; this meeting will involve the relevant manager, Human Resources representative, the member of staff and his/her representative. The member of the Executive Management team chairing the meeting may also choose to have an additional manager with the relevant expertise in attendance to advise on issues of a technical or specialist nature.
- 7.11.2 The member of staff will again be clearly told of the continued deficiencies and given the opportunity to answer the points made. The manager and/or member of staff may call witness(es) in support of their case, if appropriate. Following the meeting the Chair will make a decision as to whether there is any likelihood of the member of staff's performance achieving an acceptable level by extending the assistance offered or the time-scale agreed under the previous stage.
- 7.11.3 If the member of the Executive Management team believes adequate improvement is possible within a reasonable timescale then this should be agreed as set out in Stage 2.
- 7.11.4 If the decision is that performance will not become acceptable in the current post, further consideration will be given to whether permanent redeployment (at the same or lower pay level) is possible, and whether the alternative post is likely to be performed to the required standard by the member of staff.
- 7.11.5 If appropriate, consideration will be given to whether ill-health retirement is a suitable option for the member of staff

7.12 Outcome of Meeting

7.12.1 If no suitable alternative employment is available, or the member of staff declines redeployment, dismissal will take place. The member of staff will be advised in writing within five working days and the letter will include:

- The reasons for the dismissal;
- The date of dismissal;
- Any necessary administrative or financial arrangements;
- To whom, and within what time limit, any appeal should be made

8. Appeals

8.1 The right to an appeal exists at all stages of the formal procedure. There will not be a delay in implementing management decisions pending an appeal, but they may be subsequently amended or reversed as a result of an appeal hearing.

8.2 Stage 1

8.2.1 A member of staff, who is aggrieved at a decision made at Stage 1, has the right to appeal to the manager to whom the decision maker is responsible. Any appeal should be made in writing and should be received within 10 working days of receipt of the confirmation letter.

8.3 Stage 2

8.3.1 A member of staff who is aggrieved at a decision made at Stage 2, has the right to appeal to the manager to whom the decision maker is responsible. Any appeal should be in writing and should be received within 10 working days of receipt of the confirmation letter.

8.4 Stage 3/ Dismissal

- 8.4.1 A member of staff who is aggrieved at the decision made at Stage 3/being dismissed has the right to appeal to the Principal. Any appeal, which should be in writing and state the grounds of appeal, must be received with 10 working days of receipt of the letter of confirmation.
- 8.4.2 An appeal hearing against dismissal will be convened in accordance with the corresponding arrangements within the Staff Disciplinary Policy

9. Maintaining Satisfactory Performance

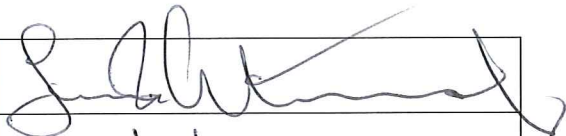
- 9.1 It is expected that the support and review carried out under this procedure should result in the member of staff being able to sustain the required level of capability and performance on a continuing basis following the end of the appropriate review period.
- 9.2 If the required improvement is not sustained for a period of 6 months following the review date of a successful outcome, then the member of staff will immediately be progressed to the next stage of the procedure.
- 9.3 If the member of staff is currently at stage 3, then they will either return to stage 3 of the procedure or be dismissed on the grounds of lack of capability. The Panel at stage 3 will reconvene to reach a decision.

10. Monitoring and Review

- 10.1 Ayrshire College will review this policy every 2 years or sooner if necessary to reflect the requirements and statutory obligations of the College.

11. POLICY AGREEMENT

11.1 This policy has been agreed in accordance with the College's procedures for negotiation and consultation

Signature (EIS)	
Date	19/2/2016
Signature (Unison)	Tracey Dwyer
Date	9.12.15.
Signature (Ayrshire College)	Jane McKie
Date	9/12/15

Executive Management Team Policy Approval Checklist

To be retained within the meeting records

The approving committee has made the following checks prior to approval of the policy

Policy

Promoting Attendance Policy and Procedure

The standardised template for presentation has been used	YES
Appropriate consultation has taken place	YES
Impact on other college policies and procedures has been considered and consulted upon where appropriate	YES
Equality Impact Assessment has been consulted on and carried out	YES
Agree the date for review	YES

The Executive Management Team endorses the above policy and associated procedure(s).

Name	
Signature	
Date	

(Responsible Person)