

# CANTERBURY COLLEGE POLICY

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Corporation Member's Capability Procedures for Senior Post-holders

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**REVIEWED BY: Clerk to the Corporation**

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**POLICY LEAD: Clerk to the Corporation**

## **CAPABILITY PROCEDURES FOR SENIOR POST-HOLDERS**

### **Policy**

The Corporation has a responsibility to make clear to senior post-holders what is required of them and to provide guidance and/or training. Equally a senior postholder who feels uncertain at any stage about the standard of work required has a responsibility to bring this uncertainty to the attention of the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). The following procedures are designed to provide senior postholders with an opportunity to address issues of capability and to work effectively to maximise their contribution to the College's activities, to enjoy job satisfaction and to achieve their full potential.

Where the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) determines that it is appropriate, he/she may invite an adviser of his/her choice to attend, to observe and to provide procedural and practical advice at any meeting held under the formal stages. The senior postholder will be allowed to be accompanied by a trade union representative or work colleague at all meetings held under the formal stages of the Capability Procedure.

### **Introduction**

This policy and procedures provide a framework to:

- enable the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) to remedy problems of poor work performance effectively and in good time
- properly manage problematic areas of poor work performance
- provide an opportunity for senior postholders to communicate relevant information about matters affecting performance
- ensure support and training is provided where applicable to improve performance
- keep senior postholders informed of what action will be taken if they fail to meet standards
- deal with such matters openly, fairly and consistently

*Capability* refers to the skill, aptitude or any other physical or mental quality of the individual and is therefore distinguishable from misconduct, for which the disciplinary procedure would be appropriate.

### **Scope**

This policy and associated procedures apply to all senior postholders of the College, except

- Senior post-holders during their probationary period

This policy and procedure does not deal with lack of capability due to misconduct which is dealt with under the Disciplinary Procedure.

## Procedure

### 1. Informal Procedure

If concerns exist, the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) must ensure s/he:

- (a) meets with the senior postholder confirming the reasons for the meeting and stating that it is being held under the informal stage of the Capability Procedure;
- (b) has made investigations to provide information/evidence to put to the senior postholder;
- (c) makes the senior postholder aware in specific terms of the required standards and expected objectives;
- (d) gives the senior postholder an opportunity to respond;
- (e) records the comments made including where differences of opinion emerge;
- (f) sets out the planned support to be offered;
- (g) confirms the time period over which monitoring will take place;
- (h) agrees an action plan including improvement in standards of performance required, and
- (i) confirms this in writing to the senior postholder

The meeting should be informal and constructive allowing the senior postholder an opportunity to express his/her opinion and for the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) to determine whether there are any external factors which make use of the Capability Procedure inappropriate.

The agreed action plan should include:

- details of the improvements required and the timescale to achieve them
- any further training needed to bring about improvement;
- monitoring, review and variance of workload as required;
- setting realistic targets and monitoring of performance;
- reviewing and monitoring of the amount of supervision.

The action plan should be given in writing to the senior postholder. The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) shall inform the Chair of the Corporation where an action plan under these procedures has been agreed, and keep the Chair informed of progress.

Continued monitoring and assessment should take place for a period of time, ranging from one to three months depending on the requirements to improve performance. At the end of the monitoring period (or earlier if the targets have been achieved) a meeting will be held between the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) and the senior postholder. If progress has been satisfactory the senior postholder will be informed and the monitoring period will end. This will be confirmed to the senior postholder in writing by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation).

Where insufficient progress or no improvement is apparent at the end of the review period, then the Principal (or where the Principal is the Senior Post-Holder in

question, the Chair of the Corporation) will refer the matter to the formal stage of this procedure.

## **2. Formal Procedure**

The formal interviews should be conducted by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation).

### **2a First Formal Interview**

This meeting should be arranged as soon as possible and normally no later than 10 working days after the meeting at the end of the informal monitoring period. The senior postholder will be informed of his/her right to be accompanied at the meeting by a trade union representative or work colleague at any meeting held under the formal procedure.

If for good cause, the senior postholder is unable to attend the meeting it will be adjourned to the nearest suitable date. If the employee is unable to attend the rearranged meeting, the senior postholder's representative (if any) will be provided with an opportunity to present the employee's case on his/her behalf. In addition, any written submission by the senior postholder or his/her representative will be considered.

At the first formal interview, the senior postholder should be reminded of the previous informal discussion and told of the shortcomings. Monitoring and assessment by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will continue for a further period of up to three months as determined by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). At the end of the monitoring period (or earlier if targets have been achieved) a formal meeting will be held between the senior post-holder and the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). The senior post-holder should be given an opportunity to explain his/her performance before the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides what action should be taken. If the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides that the action plan has not been satisfactorily executed and a verbal warning is appropriate, the verbal warning will specify any objectives determined including an action plan and make it clear that the job is at risk if improvement to the required standards in the required timescale is not achieved.

If progress has been satisfactory, the senior postholder will be informed and the monitoring period will end. This will be confirmed to the senior postholder in writing by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation).

The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will place a copy of the verbal warning to be kept on the senior post-holder's personnel file, but will be disregarded for capability purposes after 6 months provided that the senior post-holder's performance is judged to be satisfactory or better. The Chair of the Corporation will be kept informed of the outcome of the interview.

## **2b Second Formal Interview**

If the senior postholder has failed to improve, a second formal interview will be conducted by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). At the second formal interview, the senior postholder should be reminded of the previous discussions and told of the shortcomings. Monitoring and assessment by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will continue for a further period of up to three months as determined by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). At the end of the monitoring period (or earlier if targets have been achieved) a formal meeting will be held between the senior post-holder and the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). The senior post-holder should be given an opportunity to explain his/her performance before the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides what action should be taken. If the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides that the action plan has not been satisfactorily executed and a written warning is appropriate, the warning will specify any objectives determined including an action plan and make it clear that the job is at risk if improvement to the required standards in the required timescale is not achieved.

If progress has been satisfactory, the senior post-holder will be informed and the monitoring period will end. This will be confirmed to the senior post-holder in writing by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation).

The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will place a copy of the written warning to be kept on the senior post-holder's personnel file, but will be disregarded for capability purposes after 12 months (or any longer period specified in the written warning) provided that the senior post-holder's performance is judged to be satisfactory or better. The Chair of the Corporation will be kept informed of the outcome of the interview

## **2c Third Formal Interview**

If the senior post-holder has failed to improve, a third formal interview will be conducted by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). At the third formal interview, the senior post-holder should be reminded of the previous discussions and told of the shortcomings. Monitoring and assessment by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will continue for a further period of up to three months as determined by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). At the end of the monitoring period (or earlier if targets have been achieved) a formal meeting will be held between the senior post-holder and the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). The senior post-holder should be given an opportunity to explain his/her performance before the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides what action should be taken. If the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides that the action plan has not been satisfactorily executed and a final written warning is appropriate, the warning will specify any objectives determined including an action plan and make it clear that the job is at risk if improvement to the required standards in the required timescale is not achieved.

The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will place a copy of the final written warning to be kept on the senior post-holder's personnel file, but will be disregarded for capability purposes after 18 months (or any longer period specified in the final written warning) provided that the senior post-holder's performance is judged to be satisfactory or better. The Chair of the Corporation will be kept informed of the outcome of the interview

### **3 Appeals against Outcomes of Formal Interviews**

A senior post-holder may appeal against the outcome of the formal interviews by writing to the Clerk to the Corporation within five working days of the date of receipt of the decision against which the appeal is to be made, setting out in a written statement the grounds on which the appeal is based. The appeal will be heard in accordance with the procedure set out in Appendix 1.

### **4 Final Formal Interview**

If the senior postholder has failed to improve to the required level by the end of the further monitoring period, a final formal interview should be arranged with the senior postholder and his/her representative. If the chosen representative of the senior postholder is unavailable on the date of the initial dismissal hearing, the employee may delay the date of the hearing once up to five working days to enable the chosen representative to attend.

The interview will be conducted by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation). Notification of the meeting will be given in writing, giving five working days' notice. On hearing the evidence presented at the interview and any explanations, the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will decide whether to recommend dismissal on grounds of capability. If the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides to recommend dismissal on the grounds of capability, the matter will be referred to a Special Committee of the Corporation which shall be convened as soon as possible to examine and determine the case for dismissal.

If the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) decides not to recommend the dismissal of the employee on the grounds of capability, the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will inform the senior postholder of the further monitoring necessary or other action as appropriate. In such circumstances, the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will place a copy of the outcome of the final formal interview on the senior postholder's personal file, but it will be disregarded for capability purposes after the period specified by the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation), provided that the senior postholder's performance is judged satisfactory or better. The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) will also inform the Chair of the Corporation.

## **5 Special Committee**

The Special Committee shall consist of at least three members of the Corporation (excluding the Chair, the Vice-Chair, the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) and the staff and student members of the Corporation).

The senior postholder whose proposed dismissal is to be considered and determined by the Special Committee shall receive a copy of the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation)'s written statement of the capability issues which led to that person being considered for dismissal. The senior postholder shall be afforded an opportunity to respond to the statement within 10 working days, and any response must be submitted in writing to the Clerk to the Corporation.

The senior postholder and the Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) shall be invited to attend the meeting of the Special Committee which shall be arranged as soon as possible. No action shall be taken against the senior postholder until that meeting with the Special Committee has taken place. Documentation to be considered at the hearing together with the names of any witnesses who will attend the hearing must be provided to the Clerk to the Corporation at least 10 working days before the hearing. If the senior postholder does not intend to attend the meeting, the Special Committee will consider the case in his/her absence.

The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation) and senior postholder shall have the right to make representations, including oral representations, at the meeting referred to above. For this purpose the senior postholder may be accompanied and represented by a workplace colleague or trade union representative. The Special Committee will decide how the hearing is to be conducted.

After taking any representations into account, the Special Committee shall take such action as it considers appropriate, which may include dismissal. The Clerk to the Corporation will confirm the Committee's decision in writing to the senior postholder concerned, notifying that person of his/her right to appeal against it, without unreasonable delay.

## **6 Appeal Against Dismissal**

The senior postholder shall have the right to appeal to the Corporation against the decision of the Special Committee and any appeal must be submitted in writing to the Clerk to the Corporation within 10 working days of receipt of the written confirmation of the Special Committee's decision. The Corporation may delegate to an Appeal Committee of Members of the Corporation the power to determine an appeal.

When such an appeal is made, the senior postholder must be invited to a meeting of the Corporation (or Appeal Committee as appropriate) and he/she may make representations, including oral representations, and he/she may be accompanied and represented a work colleague or trade union representative.

The Corporation (or Appeal Committee) will decide how the hearing is to be conducted. The Corporation (or Appeal Committee) shall consider the decision of the Special Committee and any representations of the senior postholder and take such

action as it considers appropriate. The Clerk to the Corporation will confirm the Corporation's (or Appeal Committee's) decision in writing to the senior postholder concerned.

## **7 Monitoring and Review**

This policy and associated procedures will be reviewed every three years and sooner if there has been a change in legislation.

**CAPABILITY PROCEDURE FOR SENIOR POSTHOLDERS OTHER THAN THE PRINCIPAL (OR WHERE THE PRINCIPAL IS THE SENIOR POST-HOLDER IN QUESTION, THE CHAIR OF THE CORPORATION) - TERMS OF REFERENCE FOR APPEAL COMMITTEE**

**1 Objective**

The Appeal Committee shall consider an appeal by a senior post-holder against a written warning, final written warning or dismissal made under the formal procedure of the Corporation's Capability Procedure for Senior Post-holders and shall decide the outcome of the appeal.

**2 Membership**

The Appeal Committee shall be appointed by the Corporation and shall comprise three members of the Corporation.

The Principal (or where the Principal is the Senior Post-Holder in question, the Chair of the Corporation), staff and student members may not sit on the Committee. In addition, unless it is reasonably impracticable to avoid, no person may sit on the Committee who has any interest in its findings or has been involved in the case in any way previously.

The Chair of the Committee will be selected by the Committee.

The quorum for meetings of the Committee shall be three members.

The Clerk to the Corporation shall act as the Clerk to the Committee (or the Deputy Clerk, should the Clerk not be available).

**3 Authority**

The Appeal Committee is authorised by the Corporation to investigate any activity within its terms of reference. It is authorised to seek any relevant information it requires from any member of staff of the Corporation or any relevant third parties, and all members of staff are directed to co-operate with any reasonable request made by the Committee.

The Committee must adhere to the relevant sections of the Corporation's Capability Procedure for Senior Post-holders including, but not limited to, the appeal process under the formal procedure, the scope and purpose and the general principles specified within the procedure.

The Committee is authorised by the Corporation to obtain guidance, if it considers it appropriate, from the most senior member of the Corporation's personnel section or to obtain legal or other independent professional advice and, if it considers necessary, to secure the advice or attendance of those with relevant experience.

**4 Duties**

The Appeal Committee shall convene as soon as reasonably practicable after a reference to it.

The Committee shall examine the written statement received from the senior post-holder setting out the grounds for his or her appeal against the disciplinary decision reached under the formal procedure.

The Committee shall undertake any further investigations which it considers necessary as soon as reasonably practicable. This may involve obtaining documents or papers from members of the Corporation's staff or third parties, or speaking to members of the Corporation's staff. The investigation need not include, unless considered necessary by the Committee, a meeting with the senior post-holder concerned in advance of the appeal hearing.

The Committee shall convene an appeal hearing as soon as reasonably possible after receipt by the Clerk to the Corporation of the written appeal by the senior post-holder.

The Committee shall consider in advance of the appeal hearing how the hearing will be conducted. If any documentation is to be considered at the hearing, the Committee must ensure that it is circulated at least 5 working days in advance of the hearing.

The Committee must provide the senior post-holder with at least 10 working days notice of the appeal hearing.

At the hearing, the Committee shall first ensure that the Committee's role and the procedure to be followed are understood by all the persons attending the hearing.

The Committee shall have full discretion to admit or exclude information as it considers fit and to vary the procedure to be followed at the appeal hearing.

The Committee may adjourn the hearing if it considers further information needs to be gathered or considered. Any adjourned hearing will be reconvened as soon as reasonably practicable.

On conclusion of the appeal hearing, the Committee shall deliberate over its findings in private and reach a decision regarding the senior post-holder's appeal. The Committee may uphold the appeal, reject the appeal, and may review any warning imposed, but cannot increase it.

The Committee's decision will be provided in writing to the senior post-holder within 10 working days of the appeal hearing. If it is not possible for the Committee to reach a decision within this period, the Clerk will write to the senior post-holder on behalf of the Committee with an explanation for the delay and when the written decision can be expected.

## **5 Reporting procedures**

The Clerk to the Committee shall be responsible for the production and appropriate circulation of all minutes, papers and correspondence arising in connection with any meetings convened by the Committee or any investigations.