

IMPERIAL COLLEGE LONDON

ORDINANCE D 19

THE CAPABILITY PROCEDURE

This Ordinance is made pursuant to Part III of the Appendix to the College's Statutes

INTRODUCTION

1. This Capability Procedure shall apply to members of staff to whom the Appendix to the College's Statutes for "Academic Staff: Dismissal, Discipline, Grievance Procedures and Related Matters" (hereinafter "the Appendix") apply.
2. This Ordinance does not apply to matters of discipline or misconduct, which are dealt with under the Disciplinary Ordinance. Capability issues are problems arising where a member of staff is not sustaining the acceptable level of performance needed to meet the requirements of their role in terms of the quantity and quality of work, despite genuine effort.
3. The full range and volume of activities that a member of staff normally undertakes, or is currently undertaking, will be taken into account where there are capability concerns in specific areas.

STRUCTURED SUPPORT STAGE

4. Line managers are expected to undertake their role in line with the [Imperial Expectations](#) and [Respect for Others](#) ethos. They should meet members of staff on a regular basis to discuss work and give guidance on work matters.
5. The member of staff will be given reasonable time to improve and the period of review will be communicated at the meeting. This will vary from role to role and be based on the nature of the role, to ensure that the member of staff is given a reasonable opportunity to address the concerns on an informal basis. As a guideline (and subject to the discretion of the relevant department), informal stages would usually last for three to six months depending on the complexity of the role. Progress will be reviewed regularly during the informal review period, and feedback on progress will be given to the member of staff. Positive support and encouragement will be offered to the member of staff to help him or her meet the required standards of performance.
6. Where informal discussions are taking place with a member of staff who has disclosed a disability (as defined by the Equality Act 2010) and the concerns relate to

their performance, then arrangements should be made to assess the impact of that disability upon the member of staff's role. An assessment should be made of any adjustments that might reasonably be put in place in addition to any adjustments which have already been put in place since the member of staff disclosed their disability (where applicable).

7. Reasonable attempts will be made to resolve any problems through discussion and training, where appropriate. The arrangements will vary depending on the circumstances of each case. The line manager and member of staff will aim to agree objectives to address the problem and offer any reasonable support or training that would assist the member of staff in meeting the required standards.

8. The member of staff will be given reasonable time to improve and the period of review will be communicated at the meeting. This will vary from role to role, in line with the nature of the role, to give a reasonable opportunity to address the concerns on an informal basis. As a guideline (and subject to the discretion of the relevant department), informal structured support would usually last six months to a year depending on teaching and research cycles. Progress will be reviewed informally during the review period and regular feedback given to the member of staff. Positive support and encouragement will be offered to the member of staff to help him or her meet the required standards of performance.

9. The line manager should prepare file notes of informal meetings which may contain (if appropriate) objectives that will address concerns raised, and details of the training and other activities which will support the meeting of the objectives. They should also contain details of the period of review. The file notes should be copied to the member of staff but not entered on his or her personal record.

10. If there is no (or insufficient) improvement following structured support, or in cases of alleged serious lack of capability to perform a role, formal action will be taken which may lead to the issue of written improvement notices or dismissal. It may be that during the course of an informal meeting or review a line manager considers that the matter warrants formal action (for example, if the member of staff refuses to do the job to the required standard). If so, the informal action will be terminated and an investigation started in accordance with the arrangements outlined below. A member of staff may also choose to request that the matter be dealt with formally.

FIRST FORMAL PERFORMANCE REVIEW

11. If the lack of capability to perform a role continues or the initial level of underperformance is sufficiently serious, the member of staff will be informed that a first formal performance review meeting will be scheduled at which a member of the Human Resources Division will be present. Where the member of staff is an official of a

trade union, the relevant full-time regional officer of that trade union should be informed at the commencement of formal proceedings under this Ordinance. Performance review meetings are normally undertaken by the member of staff's line manager. However, at the outset of the process the member of staff has the option to request that Human Resources arranges for the case to be presented to an alternative manager, in which case an alternative manager may be appointed to the role (the alternative manager identified is subject always to the discretion of Human Resources).

12. The Human Resources representative will convene the meeting in accordance with paragraphs 27 - 29 of this Ordinance. The member of staff has the right to representation as outlined in paragraph 28.

13. At the meeting, the line manager will either:

a. Explain how, in their view, the member of staff is not meeting the standards required for the job and use specific examples to evidence their concerns.

b. Ask the member of staff if there are any factors that may be contributing to their level of job performance. If the member of staff has a disability, the line manager must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.

c. Discuss and agree with the member of staff any additional training or coaching support that will help him or her achieve sustainable performance improvements.

Or:

d. The line manager will explain to the alternative manager and member of staff how, in their view, the member of staff is not meeting the standards required for the job and use specific examples to evidence their concerns.

e. The alternative manager will ask the member of staff if there are any factors that may be contributing to their level of job performance. If the member of staff has a disability, the line manager and alternative manager must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.

f. The alternative manager will discuss and agree with both parties any additional training or coaching support that will help the member of staff achieve sustainable performance improvements.

14. Following the meeting, if the line manager or alternative manager decides that it is appropriate to do so, they will issue the member of staff with a first written improvement notice, an improvement action plan (that must be fully discussed and, wherever possible, agreed with all parties if the case is heard by an alternative manager) and the notes of the meeting. These documents should normally be issued within ten working days of the meeting.

15. The improvement action plan will:

- a. Outline specific, measurable and realistic work objectives with regular review periods.
- b. List any developmental and support activities designed to support the member of staff to achieve the work standards.
- c. Be applicable for a reasonable period which will be decided in consultation with the member of staff.

16. The first written improvement notice will advise the member of staff:

- a. That failure to reach the performance standards required may result in the issue of a final written improvement notice.
- b. Of their right to appeal.
- c. The period to which the improvement notice applies.

17. If the member of staff's performance has improved sufficiently at the end of the review period, this will be acknowledged by the line manager and the member of staff advised in writing that no further action will be instigated and that the improvement notice will cease to be "live".

SECOND FORMAL PERFORMANCE REVIEW

18. If the lack of capability to perform a role continues, the line manager will convene a second formal performance meeting with the member of staff in accordance with paragraphs 27 – 29 of this Ordinance. The member of staff has the option to request that Human Resources arranges for the case to be presented to an alternative manager, in which circumstances an alternative manager may be appointed (again subject always to the discretion of Human Resources).

19. The meeting will be conducted by either the line manager or alternative manager in accordance with paragraph 13. They will also raise with the member of staff possible adjustments to the role within the remit of the grade and the operational requirements.

20. Following the meeting, if the line manager or the alternative manager decides that it is appropriate to do so, they will issue the member of staff with a final written improvement notice in line with paragraph 16, an improvement action plan in accordance with paragraph 15 (that must be fully discussed and, wherever possible, agreed with both parties if the case is heard by an alternative manager) and notes of the meeting. These documents should normally be issued within ten working days of the meeting.

21. If the member of staff's performance has improved sufficiently at the end of the improvement action plan review period, this will be acknowledged by the manager and the member of staff advised in writing that no further action will be instigated and that the improvement notice will cease to be "live".

THIRD FORMAL STAGE

22. If the lack of capability to perform a role continues, the line manager will advise the member of Human Resources Division to convene a formal capability review hearing in accordance with section 6 of this Ordinance.

23. At the capability hearing, the line manager will describe to the person(s) hearing the case the work standards expected of the member of staff and explain how the member of staff's work has, in his or her view, fallen short of the standards required. The line manager will also describe the measures that have been taken to support the member of staff to improve their performance.

24. The member of staff or the representative may offer an explanation for any of the points raised.

25. After hearing all the evidence and representations the following options are available to the person(s) hearing the case:

- a. Extend the improvement action plan review period.
- b. Possible adjustments to the role within the remit of the grade and the operational requirements.
- c. Redeploy the member of staff to alternative work on the same grade or a lower grade and pay with the agreement of the member of staff.

d. Dismiss the member of staff, with appropriate notice, on grounds of the lack of capability.

26. The written decision of the panel will be provided to the member of staff, any representative and to the line manager, usually within ten working days of the meeting.

NOTIFICATION, REPRESENTATION AND RECORDING OF FORMAL MEETINGS

27. All members of staff will receive ten working days' written notification of any formal meeting convened under the capability procedure. The notification will include:

- a. The date, time and venue of the meeting.
- b. Details of all attendees at the meeting, including any witnesses.
- c. Copies of any documentation that will be considered at the meeting.
- d. A copy of the capability procedure.
- e. The potential outcome of the meeting, i.e., issue of a first or final written improvement notice, or dismissal.

28. The member of staff has a right to be accompanied by a work colleague or (where they are a member of that trade union) a trade union representative. Where the member of staff's representative is unavailable to attend the original hearing date, one postponement will be allowed for an alternative date within five working days of the original date.

29. The Human Resources representative will arrange for notes to be taken at all formal meetings and a copy will be provided to the member of staff following the meeting. If the member of staff does not agree with the contents of the notes of the meeting, they should make handwritten amendments (and initial each amendment). A copy of the amended notes should be attached to the original typed version and will be added to the Hearing papers. If the individual makes substantive changes to the notes, the changes should be discussed with the individual and consideration should be given as to whether the changes should be referred to in any documents referencing the notes.

RIGHT TO APPEAL

30. A member of staff has the right to appeal against any formal action taken against them under this Ordinance.

31. A member of staff wishing to appeal against any formal action taken against them under this Ordinance should do so within ten working days of receipt of the written notice of the action being communicated to them.
32. The appeal notice, which must be in writing, must specify the reason(s) for the appeal.
33. Full details of the appeals procedure are published within Ordinance D7.

CAPABILITY AND ILL HEALTH

34. A member of staff's capability to carry out their role to the required standard may be affected by their health and level of absence from work. In such circumstances, it may be more appropriate to manage the matter under the [Incapacity on Health Grounds Ordinance](#).
35. Line managers must bear in mind the provisions of the Equality Act 2010, in particular the obligation to make reasonable adjustments when supporting members of staff with a disability.
36. Throughout the capability procedure, the work of the member of staff will be considered in the light of any adjustments that have been agreed by their line manager.

Approved by the Council: 15 May 2015

Effective from: 16 May 2015