

Capability Policy and Procedure



Procedure

The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary and in order to address:

- Poor performance
- Persistent short-term absence
- Long-term ill-health capability

It is our policy to ensure that concerns over an individual's performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.

This policy does not apply to cases involving proposed redundancies or misconduct. In those cases, reference should be made to the appropriate policy or procedure.

This procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

Identifying Performance Issues

In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file and can form part of the capability procedure. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to:

- Clarify the required standards
 - Identify areas of concern
 - Offer informal support and guidance through regular 1:1 meetings
 - Use reflective practice
 - Identify and implement further training / coaching
 - Establish the likely causes of poor performance and identify any training needs
- and/or:
- Set targets for improvement and a time-scale for review

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Employees will not normally be dismissed for performance reasons without previous warnings. However, in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

If we have concerns about your performance, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and if appropriate, interviewing you and/or other individuals confidentially regarding your work.

Disabilities

Consideration will be given to whether poor performance may be related to a disability and if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider adjusting this procedure in appropriate cases.

If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your line manager in the first instance or a member of the Human Resources Department.

Confidentiality

We aim to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees (and anyone accompanying you) must treat any information communicated to them in connection with a matter which is subject to this capability procedure as confidential.

You and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

You must refrain from discussing any aspect of this with any other member of staff and customers (including parents of children and client employers) without prior permission from your line manager.

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Notification of a Capability Hearing

If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:

- a summary of relevant information gathered as part of any investigation.
- a copy of any relevant documents which will be used at the capability hearing.
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually two days, to prepare your case based on the information we have given you.

Right to be accompanied at Hearings

You may bring a companion to any capability hearing or appeal hearing under this procedure. Your companion may be either a trade union representative or a colleague. You must tell the manager conducting the hearing who your chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days, we may require you to choose someone else.

We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English.

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Procedure at a Capability Hearing

If you or your companion cannot attend the hearing, you must inform us immediately and we will usually arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If you fail to attend without good reason or are persistently unable to do so (for example, for health reasons), we may have to take a decision based on the available evidence including any written representations you have made.

The hearing will normally be held by your line manager or a more senior manager and may be attended by a member of the Human Resources Department. You may bring a companion with you to the hearing. Your companion may make representations, ask questions, and sum up your case, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.

The aims of a capability hearing will usually include:

- Setting out the required standards that we believe you may have failed to meet
- Going through any relevant evidence that has been gathered during the course of the investigation
- Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations
- Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance
- Where appropriate, discussing targets for improvement and a time-scale for review
- If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment

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A hearing may be adjourned if we need to gather any further information or consider any of the matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

We will inform you in writing of our decision and our reasons for it, usually within one week of the hearing. Where possible we will also explain this information to you in person.

Stage 1 Hearing – First Written Warning

Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, we will give you a first written warning, setting out:

- The areas in which you have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

The warning will normally remain active for twelve months from the end of the review period. After the active period the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of any future disciplinary proceedings.

Following a Stage 1 capability hearing, a revised Performance Improvement Plan will be issued accompanied with the formal first written warning that we have serious concerns about your work performance. This will set out:

- The areas in which you have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

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Your performance will be monitored during the review period, and we will write to inform you of the outcome:

- If your line manager is satisfied with your performance, no further action will be taken, or
- If your line manager is not satisfied, the matter may be progressed to a Stage 2 disciplinary hearing, or
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended

Stage 2 Hearing – Final Written Warning

If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability hearing. We will send you written notification.

Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:

- The areas in which you have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review and
- The consequences of failing to improve within the review period, or of further unsatisfactory performance

A final written warning will normally remain active for twelve months from the end of the review period. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.

Following a Stage 2 capability hearing, a revised Performance Improvement Plan will be issued accompanied with the final written warning that we have serious concerns about your work performance. This will set out:

- The areas in which you have not met the required performance standards
- Targets for improvement
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance
- A period for review

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- The consequences of failing to improve within the review period, or of further unsatisfactory performance

Your performance will be monitored during the review period, and we will write to inform you of the outcome:

- If your line manager is satisfied with your performance, no further action will be taken
- If your line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing or
- If the manager feels that there has been a substantial but insufficient improvement, the review period may be extended

Stage 3 Hearing – Dismissal or Redeployment

We may decide to hold a Stage 3 capability hearing if we have reason to believe:

- Your performance has not improved sufficiently within the review period set out in a final written warning
- Your performance is unsatisfactory while a final written warning is still active or
- Your performance has been grossly negligent, such as to warrant dismissal without the need for a final written warning. We will send you written notification of the hearing as set out in paragraph 5

Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:

- Dismissing you or
- Redeploying you into another suitable position at the same or a lower grade.

Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

Appeals against action for poor performance

If you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Director within five days of the date on which you were informed in writing of the decision.

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If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful, you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation.

If any new information comes to light, we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will give you written notice of the date, time and place of the appeal hearing. This will normally be within ten days after the appeal is received.

The appeal hearing may be a complete re-hearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event, the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. You may bring a companion with you to the appeal hearing.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing we may:

- Confirm the original decision
- Revoke the original decision or
- Substitute a different penalty

We will inform you in writing of our final decision as soon as possible, usually within ten working days of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

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Further Guidance

- Acas Conduct and capability procedures when managing performance: [Conduct and capability procedures when managing performance - Acas](#)

Linked Policies

Investigation, Disciplinary and Grievance

This policy was adopted on	Signed on behalf of the nursery	Date for review
16/1/2023	<i>m khaira</i>	16/01/2024