

Capability Procedure

June 2022

Introduction

The primary aim of this Capability Procedure is to provide a framework within which the Organisation can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

The Organisation recognises the difference between a deliberate or careless failure on the part of the employee to perform to the standards of which they are capable, in which case the Disciplinary Procedure will be used, and a case of incapability, where the employee is lacking in knowledge, skill or ability and so cannot perform to the standard required. In this latter case, the Organisation will use this procedure in an attempt to improve the employee's performance.

This Capability Policy is entirely non-contractual and does not form part of an employee's contract of employment.

The Organisation reserves the right not to use this procedure or dismiss you without following the Capability Procedure if you have less than 24 months' continuous service. This procedure does not apply to agency workers or contractors.

Considerations

Employees will not normally be dismissed for capability reasons without previous warnings. However, in serious cases of gross negligence, dismissal without previous warnings may be appropriate.

Procedure

For the purpose of this Capability Procedure, capability is defined as:

"Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience. Such failings will be identified by use of the following procedures and steps taken to



improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of incapability".

In the first instance, minor performance issues will be dealt with informally between the employee and their line manager as part of day-to-day management. A note of any such informal discussions may be placed on the employee's personnel file.

Informal discussions will be held with a view to:

- Clarifying the required work standards and the level of performance expected of the employee
- Identifying areas of concern
- Establishing the likely causes of poor performance
- Identifying any training or supervision needs
- Setting targets for improvement and agreeing a timescale for review

In cases where informal discussion with the employee does not lead to a satisfactory improvement in performance, or where the performance issues are more serious, the following Capability Procedure will be used.

The process involved in information gathering will depend upon the circumstances but may involve reviewing the employee's personnel file, including appraisal records, gathering any relevant documents, monitoring work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding work performance.

The Organisation will give consideration to whether the unsatisfactory performance is related to a disability or ongoing health related issues, and, if so, whether there are any reasonable adjustments that could be made to the requirements of the employee's job or other aspects of the working arrangements. The Organisation may also consider making adjustments to this procedure in appropriate cases. If employees wish to discuss or inform the Organisation of any medical conditions they consider relevant, they should initially discuss this with their line manager.

Capability Meeting

If the Organisation considers that there are grounds for taking formal action over alleged poor performance/capability, the employee will be required to attend a capability meeting. The Organisation will notify the employee in writing of the concerns over performance and the basis for those concerns and will invite the employee to a capability meeting to discuss the matter. The Organisation will also include the following where appropriate:



- A summary of relevant information gathered
- A copy of any relevant documents which may be referred to at the capability meeting
- A copy of any relevant witness statements (except in circumstances where a witness's identity is to be kept confidential, in which case the employee will be provided with as much information as possible whilst maintaining confidentiality)
- A copy of the Capability Procedure

Having given the employee a reasonable opportunity to consider their response, (at least five working days) a formal capability meeting will then take place, conducted by a manager, at which the employee will be given the chance to state their case, accompanied if requested by a trade union official or a fellow employee of their choice (see later section).

The employee and their companion must take all reasonable steps to attend the meeting. Employees should inform the Organisation immediately if they or their companion cannot attend the meeting and the Organisation will usually arrange an alternative time. Failure to attend the meeting without good reason, or if persistently unable to attend, for example, for health reasons, the Organisation may have to make a decision based on the information available.

The purposes of the capability meeting include:

- To set out the required standards that the Organisation considers the employee has not met
- To establish the likely causes of poor performance (including any reasons why any measures taken so far have not led to the required improvement)
- To allow the employee the opportunity to explain the poor performance and to ask any relevant questions.

Except in the case where dismissal is proposed, the purposes of the capability meeting also include:

- To discuss measures, such as additional training or supervision, which may improve the employee's performance
- To set targets for improvement and to set a reasonable timescale for review (reflecting the circumstances of the case).

In a case where dismissal is proposed, the purposes of the capability meeting also include:

- To establish whether there are any further steps that could reasonably be taken to rectify the employee's poor performance



- To establish whether there is any reasonable likelihood of the required standards of performance being met within a reasonable time
- To discuss whether there is any practical alternative to dismissal, such as redeployment to any suitable available job at the same or lower grade

The meeting may be adjourned to allow the Organisation to gather any further information. Employees will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

Following the Capability meeting (and any adjournments), if the Organisation decides that the employee's performance is unsatisfactory, the employee will be informed in writing of the decision in accordance with the stages set out below. Where possible the Organisation will also explain this information to the employee in person with the opportunity for any questions to be asked.

Capability Warnings

Stage 1 Capability meeting: First written warning

If the Organisation decides performance is unsatisfactory the employee will be given a first written warning. This will set out the areas in which the employee has 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 the employee's performance, a timescale for review and the likely consequences of failing to improve to the required standards within the review period. The first written warning will be recorded and will normally remain active for six months, after which time it will be disregarded for the purposes of the Capability Procedure. However, the length appropriate for the warning to be active may vary dependent on the circumstances and will be made clear to the employee. After the active warning period, the warning will remain permanently on the employee's personnel file, but will be disregarded in deciding the outcome of future capability proceedings.

The employee's performance will be monitored during the review period.

If the Organisation is satisfied with the employee's performance, no further action will be taken.

If, however, the Organisation is not satisfied with the employee's performance, the matter may be progressed to Stage 2 or, if the



Organisation feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2 Capability meeting: Final written warning

If failure to improve performance continues, the process set out in Stage 1 will be repeated. If the Organisation decides the employee's performance is unsatisfactory it will result in a final written warning being issued. The warning will set out the areas in which the employee has still not met the required performance standards, targets for improvement, any further measures, such as additional training or supervision, which will be taken with a view to improving the employee's performance, a further timescale for review and the likely consequences of failing to improve to the required standards within the further review period i.e. that dismissal will probably result. The final written warning will be recorded and will normally remain active for twelve months, after which time it will be disregarded for the purposes of the Capability Procedure. However, the length appropriate for the warning to be active may vary dependent on the circumstances and will be made clear to the employee. After the active warning period, the warning will remain permanently on the employee's personnel file, but will be disregarded in deciding the outcome of future capability proceedings.

The employee's performance will again be monitored and, at the end of the further review period, the Organisation will write to the employee to advise them of the next steps. If the Organisation is satisfied with the employee's performance, no further action will be taken. If however, the Organisation is not satisfied with the employee's performance, the matter may be progressed to Stage 3, or if the Organisation feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 3 Capability meeting: Dismissal

If failure to improve performance continues, the employee will be required to attend a Stage 3 capability meeting, and be advised that the outcome of this meeting could be dismissal. If the Organisation determines that the employee has failed to improve performance in response to the procedure so far this will normally lead to dismissal with appropriate notice or payment in lieu of notice, unless performance has been so negligent as to amount to gross misconduct.

A dismissal decision will only be made after a full investigation. The employee will be informed of the reasons for dismissal, the appropriate period of notice and the date on which their employment will terminate.



Alternative job roles

As an alternative to issuing a capability warning or as an alternative to dismissal, the Organisation may consider redeploying the employee, with their agreement, to another available job at the same or lower terms and conditions of employment, which is more suited to their abilities. This option will only apply if a suitable alternative job is available at the time the decision is made.

Right to be accompanied at capability meetings

Employees may bring a companion to any capability meeting or appeal meeting under this procedure. The companion may be either a trade union representative or fellow employee. Employees must advise the manager conducting the meeting who the chosen companion is, in good time before the meeting.

The companion may take an active role in the meeting. The companion may make representations, ask questions and sum up the case. They will not be allowed to answer questions on the employee's behalf. Employees may confer privately with their companion at any time during the meeting.

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 the choice of companion is unreasonable, the Organisation may require the employee to choose someone else, for example:

- If in the Organisation's opinion the companion may have a conflict of interest or may prejudice the meeting
- If the companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days.

Appeals

If the employee wishes to appeal against the Organisation's decision, they can do so within five working days of the Organisation's decision. Appeals must be made in writing and state the grounds for appeal.

If employees raise any new matters in their appeal, the Organisation may need to carry out further investigation. If any new information comes to light, the Organisation will provide the employee with a summary, including, where appropriate, copies of additional relevant documents and witness



statements. The employee will be given reasonable opportunity to consider this information before an appeal meeting.

The employee will be invited to attend an appeal meeting, which will be chaired by a member of the Board. In circumstances where this is not possible, all efforts will be made to ensure the situation is dealt with as impartially as possible.

The appeal meeting 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 the Organisation's discretion depending on the circumstances of the case. At the appeal meeting, the employee will be given the chance to state their case and will have the right to be accompanied by a trade union official or a fellow employee of their choice (see previous section).

The appeal meeting may be adjourned to allow the Organisation to gather any further information. The employee will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

Following the capability appeal meeting (and any adjournments), the employee will be informed of the appeal decision in writing, which may:

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

The Organisation will inform the employee in writing of the decision as soon as possible. Where possible, the Organisation will also explain the decision in person. The Organisation's decision on an appeal will be final.

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