

## Capability procedure

### 1. Introduction

This procedure applies to all employees who have successfully completed their probation period and establishes guidelines for line managers and employees in relation to the management of unsatisfactory performance. It is designed to ensure that cases of unsatisfactory performance are dealt with similarly and fairly, with the prime objective of improving an employee's performance to the required level.

### 2. Principles

- The first step is to establish whether it is a misconduct or capability issue, as only concerns about work performance due to lack of knowledge or skills should be addressed through the capability procedure. For example, an individual incapable of working to required standards through no fault of their own should be taken through the capability procedure, whereas concerns about work performance due to carelessness, neglect or lack of effort should be dealt with through the disciplinary procedure as misconduct.
- Managers have a responsibility for setting realistic and measurable standards of performance, for explaining these standards to employees and for supporting employees to achieve the standards set.
- Managers also have a responsibility for making employees aware of the standards expected of them and where expectations change and develop over time, informing employees of these changes.
- All employees have a contractual responsibility to perform their duties to an acceptable standard and are expected to be proactive in terms of ensuring that they are clear and understand the standards of performance required of them.

### 3. Informal stage

- When there is evidence that an employee is not performing at an acceptable level, the line manager should investigate the circumstances without delay and make every effort to establish the reasons for the unsatisfactory performance.
- If, following this assessment, the line manager considers that the employee's performance is poor due to capability then an informal discussion with the employee will be arranged.
- At this meeting the key points to be covered by the line manager will be to make clear the areas in which the employee's performance is below expectations (explaining the grounds/evidence for this view) with the aim of identifying any problems or reasons for the unsatisfactory performance, which could be resolved. Solutions to the problem could include closer supervision, additional guidance, advice, training, coaching or some other kind of ongoing support to the individual.
- Give the employee the opportunity to explain their unsatisfactory performance and to raise any concerns they may have about the job, or the support and guidance they have been given to do it.
- Ensure that the employee is aware of the level of performance required in relation to each element of the duties about which there is a concern.
- Set a reasonable time frame within which improvement is expected and arrange a further meeting at the end of this time to review the situation.
- The content and outcome of this meeting will be confirmed by the line manager in writing to the employee, including the type of improvement required, any additional support or training that will be provided, any other agreed actions and the timescale for improvement and review. The line manager should also make the employee aware of the consequence of failing to reach the expected standard of performance.

- When discussing unsatisfactory performance, line managers must be specific about their concerns and demonstrate evidence and/or give examples to support their assertions.
- At the end of the informal review period the line manager will need to write to the employee to confirm the outcome of the informal review period, stating either that performance targets have been reached, ending the process, or performance targets have not been reached, requiring a formal stage 1 meeting under the capability procedure.
- If there is an improvement in the performance which is not sufficient, then the informal review period can be extended to allow the employee to reach the required level and demonstrate they can maintain the improvement over a sustained period of time.

#### 4. Formal stages

- Where an employee's performance fails to improve as a result of having been given relevant support, for example, guidance, advice, coaching or training, and performance remains below the required standard, then the formal stages of this procedure will apply.
- It is important to make it clear to the employee, the outcomes of the various stages potentially resulting in the following sanctions:

Stage 1 – First Written Warning (12 months on file)

Stage 2 – Final Written Warning (18 months on file)

Stage 3 – Dismissal

- If an employee's unsatisfactory performance is sufficiently serious or gross negligence is alleged, it may be appropriate to move directly to stage 2 or 3. This might occur where the employee's actions have had, or are likely to have, a serious or harmful impact on a setting, a service user or person. Alliance members can use their free 24-hour legal advice line prior to taking the decision to move to a higher stage.
- At any stage during the formal stages of the procedure, if the employee's performance meets the required standard and this is sustained, the process ends.

#### 5. Stage 1 – Potential issue of First Written Warning

- If there is continued unsatisfactory performance, the employee should be invited to a formal meeting to discuss the matter. [The meeting will normally be conducted by the line manager who will be accompanied by a director]. At this meeting the employee will have the opportunity to explain their unsatisfactory performance.
- At the stage 1 meeting the employee will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance. They will be told as precisely as possible, the reasons for the manager's continued concerns about their performance.
- If, having heard any explanations offered by the employee, the line manager remains concerned and an extension is not appropriate, the line manager will write to the employee issuing them with a **First Written Warning** normally within 10 working days. The letter will indicate:

1. the unsatisfactory performance

2. the performance required

3. the improvement required

4. the timescale for improvement

5. any review date

6. any support that can be offered to assist the employee to improve their performance
  7. the consequence of not meeting the performance targets
  8. the right to appeal
- This warning will be placed on the employee's personnel file and will be removed as spent after a period of 12 months.
  - At this meeting further consideration should be given to any additional training or support that could reasonably be provided to the employee to enable them to reach the required standard of performance.
  - A reasonable time period (immediately or within a reasonable timescale) will be set within which improvement is expected and a further meeting arranged at the end of this time to review the situation.
  - If there is improvement in the performance which is not sufficient, then the first written warning can be extended to allow the employee to reach the required level and demonstrate that they can maintain the improvement over a sustained period of time.

## 6. Stage 2 – Potential issue of a Final Written Warning

- If the problem is more serious, or if there has been a failure to meet the performance targets set at the stage 1 meeting, the employee shall be invited in writing to a stage 2 meeting, normally with at least ten working days' notice. The letter inviting the employee to the meeting shall set out the issues to be considered.
- At this meeting the manager will review the history of the case, including the steps that have been taken to support the employee to achieve the required level of performance.
- If no satisfactory explanation is given for the failure to meet the required standard of performance, the manager will write to the employee issuing them with a **Final Written Warning** normally within 10 working days. The letter will indicate:
  1. the unsatisfactory performance
  2. the performance required
  3. the improvement required
  4. the timescale for improvement
  5. any review date
  6. any support that can be offered to assist the employee to improve their performance
  7. the consequence of not meeting the performance targets, for instance, that the employee may be dismissed if no acceptable improvement in performance is achieved within the given timescale
  8. the right to appeal as outlined in section 10 will apply (see below)
- This formal and final written warning will be placed on the individual's personnel file and will be removed as spent after a period of 18 months.
- Further consideration should be given to any additional training or support that could reasonably be provided to the employee to enable them to reach the required standard of performance. A review period (immediately or within a reasonable time scale) will be set within which improvement is

expected and a further meeting arranged at the end of this time to review the situation.

## **7. Stage 3 – Potential dismissal**

- If the employee does not improve as specified in the final written warning issued under stage 2, or where serious performance issues arise or gross negligence is alleged (and after such investigation as is appropriate in the circumstances), the employee will be invited to a stage 3 meeting. Where practicable the panel (who will decide the outcome) should consist of a minimum of two people not previously involved in stage 1 and 2.
- A letter will be sent to the employee, normally ten working days before a stage 3 meeting, detailing the purpose of the meeting, and the circumstances that have led the employer to consider dismissing the employee. The employee will be invited to make any written submissions. The employee will also be advised that one consequence of the meeting may be the termination of employment. Prior to the meeting the employee will be provided with copies of the papers that will be considered at the meeting.
- At the stage 3 meeting, the line manager normally will present the history of the case, including the steps that have been taken to support the employee to achieve the required level of performance. The employee's explanation will be heard and considered.
- The person conducting and hearing the case will consider the facts of the case and any representations made. On the basis of the information presented the chair may decide on the following outcomes:
  1. that there are insufficient grounds to dismiss the employee under this procedure
  2. extension or renewal of a warning or final written warning issued under this procedure
  3. that the employee should be dismissed on grounds of capability (with appropriate notice)

The above list is not exhaustive and the outcome may vary according to the circumstances of the case.

- The decision will be confirmed in writing within 10 working days of the meeting and will notify the employee of her or his right to appeal against any sanction. In the event that the decision taken is to dismiss the employee, the letter will include the reasons for the dismissal and the date that her or his employment will terminate together with details of any notice arrangements.

## **8. Representation**

- The employee has the right, if they wish, to be accompanied by a workplace colleague or trade union representative at all formal (stage 1, 2 and 3) meetings.
- It should be noted that the representative/companion has no right to answer questions on behalf of the employee, to address the meeting if the employee does not wish him or her to do so, or to prevent the employer explaining its case.

## **9. Timescales**

- Employees are required to take all reasonable steps to attend the meetings. However, should, for an unforeseen reason, either the employee, the line manager or their companion be unable to attend the meeting, it must be rearranged.
- An employee will receive a minimum of 48 hours advanced notice in writing of any stage 1, 2 or 3 meetings arranged under this policy from receipt of the letter to the addressee. This letter will include a statement which sets out the areas of unsatisfactory performance and any other relevant circumstances. Where witnesses are to be called by the manager or the individual, prior notice of this should be given.

- Should an employee's companion be unable to attend then the employee should make contact within 5 days of the date of the letter to arrange an alternative date that falls within 10 working days of the original date provided.
- Time limits may be extended by mutual agreement.

## **10. Right of appeal**

- An employee has the right to appeal against any formal action taken against them in line with this procedure and must do so in writing to the identified person in their outcome letter, within seven working days of the date of the outcome letter, stating their grounds for appeal.
- Normally for appeals, the Chair of the appeal meeting will not have had any prior involvement in the process.
- Normally an appeal meeting will be arranged with the employee together with the line manager of the manager who issued the sanction (e.g. a trustee, owner or director). This should happen within 15 working days of the employee's request.
- The appeal meeting will take into account any new evidence that either party may present and consider its relevance to the sanction imposed.
- Where an appeal is upheld, reference to the warning or dismissal will be removed from file. Alternatively, the outcome of the appeal hearing may be to impose a lesser penalty, for example, a final warning instead of dismissal. The outcome of the appeal will be set out in a letter to the employee.
- A letter detailing the outcome of the appeal should be issued within 10 working days of the appeal meeting.