

Capability Policy & Procedure – Performance

1. Policy Summary

The purpose of this policy and procedure is to help employees where their performance has fallen below achieving an acceptable standard, within a workable timescale. The emphasis is on encouragement, training and support to help the employee make the necessary improvements. However, we recognise that in some cases, it may be necessary to take further action where improvements to performance are not achieved or sustained for a reasonable period. Any continued capability concerns caused by performance may be dealt with under this Capability Policy and Procedure – Performance.

It is our policy to ensure that all capability concerns are dealt with fairly and confidentially, that steps are taken to establish the facts specific to each case and to give colleagues the opportunity to respond at a hearing before any formal action is taken.

This policy and procedure address the capability of a colleague for reasons relating to performance.

This procedure applies to all employees regardless of length of service.

2. Informal Counselling

In the first instance, performance and capability 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 with any agreed action plan. This does not constitute as a formal warning but will act as a point of reference for both you and your manager. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate.

Informal discussions may help:

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

If, despite support, the employee is unable to reach or sustain the required standard of improvement, the Line Manager must gather evidence to demonstrate the targets and expectations that were not

met within the workable timeframe and any support that has been provided to the employee during the process.

3. Notification of a Capability Hearing

We may need to take formal steps under this procedure if the employee fails to reach or sustain the required standard of improvement.

We will give you at least **48 hours** written notice of the date, time and place of a capability hearing.

The hearing will be conducted by the colleagues Line Manager (Chair), and will be accompanied by a company representative to take minutes of the hearing

4. Right to be Accompanied

You are entitled to bring a companion to any formal hearing under this procedure. The companion may be either a trade union representative or a current colleague. You must tell the person chairing the hearing who your chosen companion is, in good time before the hearing.

At the hearing, your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may talk privately with them at any time during the hearing.

It is your responsibility to arrange for the companion to attend. Acting as a companion is voluntary and the colleague is under no obligation to do so. If they agree to do so, they will be allowed reasonable time off from duties without loss of pay.

If the chosen companion is unavailable at the time a hearing is scheduled and will not be available for more than **seven calendar days** afterwards, we may ask you to choose someone else.

We reserve the right to refuse or request an alternate companion where we feel that their presence may impede the procedure.

5. Procedure at Capability Hearings

Employees will be given an opportunity to present their case and raise any mitigating factors they wish us to take into consideration.

Employees must take all reasonable steps to attend any capability hearing. Failure to do so without good reason may be treated as misconduct. If you or your companion are unable to attend at the time specified, you should immediately inform the relevant chairperson.

Where an employee cannot or fails to attend a capability hearing in person, they may provide a written submission to the chair for consideration in their decision. Where an employee fails to attend on more

than one occasion without providing a reason in advance, the hearing will take place in their absence and a decision made based on evidence available to the chairperson.

At the capability hearing we will go through the evidence which has been gathered to date regarding your case. You will be able to respond and present any evidence of your own.

We may adjourn the capability hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the adjournment, and after careful consideration the chairperson will issue their decision.

Any decision will be confirmed in writing to you within **seven calendar days** of the hearing which will also include your right to appeal.

6. Hearing Stages

The sanctions for capability are set out below. No sanction should be imposed without a capability hearing.

7. Stage 1 Hearing

The chairperson will:

- I. Discuss the required standards you have failed to meet, and going through any relevant evidence that we have gathered
- II. Allow you to ask questions, present evidence, call witnesses, respond to evidence and make representations
- III. Establish the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement
- IV. Identify whether there are further measures, such as training, adjustments, or supervision, which may improve performance.
- V. Where appropriate, discuss targets for improvement and a timescale for review.

If as a consequence of the hearing, the chairperson concludes that your performance remains a matter of concern then this will be made clear to you. You will be advised that this is unacceptable and is bringing into question your capability to fulfil your contract.

You will be informed that an improvement is required with a **First Written Warning** being applied to your personnel file for performance capability. This will remain in force for a period of **six months**. The chairperson may also refer you for medical advice or recommend further training and/or welfare support from your Line Manager.

The decision will be confirmed in writing to you within **seven calendar days** of the hearing which will also include your right to appeal.

If during the period of **six months** there are no further performance concerns, then the **First Written Warning** will be disregarded for capability purposes but will form a permanent part of your personnel record. Should further performance issues occur during this period, a Stage 2 hearing will be required.

8. Stage 2 Hearing

If whilst on a **first written warning** your performance does not improve, then a stage 2 hearing will be scheduled.

The chairperson will:

- I. Discuss what required standards and expectations are still not being met despite the earlier warning, and going through any relevant evidence gathered
- II. Allow you to ask questions, present evidence, call witnesses, respond to evidence and make representations
- III. Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- IV. Identify whether there are further measures, such as training, adjustments, or supervision, which may improve performance
- V. Where appropriate, discussing targets for improvement and a timescale for review
- VI. Where appropriate, the chairperson may consider seeking medical evidence or advice

If, as a consequence of the hearing, the chairperson concludes that your performance remains a matter of concern then this will be made clear to you. You will be advised that this is unacceptable and is bringing into question your capability to fulfil your contract.

You will be informed that an improvement is required with a **Final Written Warning** being applied to your personnel file for performance. This will remain in force for a period of **twelve months**.

The decision will be confirmed in writing to you within **seven calendar days** of the hearing which will also include your right to appeal.

If during the period of **twelve months** there are no further capability concerns, then the **Final Written Warning** will normally be disregarded for capability purposes but will form a permanent part of your personnel record. Should further performance issues occur during this period, a Stage 3 hearing will be required.

9. Stage 3 Hearing

If whilst on a **Final Written Warning** your performance does not improve, a stage 3 hearing will be scheduled.

The chairperson will:

- I. Discuss what required standards and expectations are still not being met despite the earlier warning, and going through any relevant evidence that we have gathered

- II. Allow you to ask questions, present evidence, call witnesses, respond to evidence and make representations
- III. Establish the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement
- IV. Identify whether there are further measures, such as training, adjustments, or supervision, which may improve performance
- V. Consider redeployment opportunities.
- VI. Where appropriate, discussing targets for improvement and a timescale for review
- VII. Where appropriate, the chairperson may consider seeking medical evidence or advice
- VIII. 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

If as a result of the stage 3 meeting the chairperson concludes that despite measures taken, there has been insufficient improvement in performance, you may be dismissed on the grounds of performance capability.

Any decision will be confirmed in writing within **seven calendar days** of the hearing.

10. Right to Appeal

If you feel that we have not fairly considered your submissions under our Capability Policy and Procedure – Sickness Absence, you can request an appeal of the original decision. You should appeal in writing, to the appeal manager named in your outcome letter, stating your full grounds of appeal, within **seven calendar days**.

We will provide you with at least **48 hours** written notice of the date, time and place of the appeal hearing.

The appointed appeal chair will be a manager who has not dealt with the original matter. The chairperson will be accompanied by a company representative to take minutes of the hearing.

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.

You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

In any event, written notification of the outcome of the hearing will usually be sent to the colleague within **seven calendar days** of the hearing, or as soon as reasonably practicable, together with an explanation of the appeal decision taken.

Following the appeal hearing we may:

- I. Confirm the original decision
- II. Revoke the original decision.

There will be no further right of appeal.

Signed off by	Group Managing Director
Held By	People Team
Issued	2023
Version	Version: 01
References	Employment Law

Controlled Document