

CAPABILITY AND PERFORMANCE POLICY

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RELATED DOCUMENTS

These documents will provide additional information.

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1.0 POLICY OVERVIEW

1.1 Purpose

The organisation is committed to a culture in which individuals and groups take responsibility for the continuous improvement of business processes and of their own skills, behaviour and contributions. This policy is designed to ensure that cases of under-performance are dealt with similarly and fairly, with the prime objective of improving an individual's performance to the required level. This policy also aims to ensure that where some form of formal action is needed, issues are dealt with promptly, fairly and consistently.

1.2 Who this policy applies to

The policy applies to all staff that are employees of the organisation in either a permanent, fixed term or temporary post with the exception of bank and agency staff.

1.3 Key principles

- All members of staff have a contractual responsibility to perform their duties to an acceptable standard and they should be given all reasonable support and encouragement to do so.
- For the purpose of this policy, an individual's capability to do their job is assessed by reference to their skills, qualifications, aptitude, health or any other physical or mental quality.
- Managers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Informal action will be considered, where appropriate, to resolve problems.
- Employees will have an opportunity to appeal against any formal decision made.
- The capability and performance procedure is intended for dealing with unsatisfactory performance issues and issues affecting an individual's capability to do their job on the grounds of skills, qualifications, aptitude, health or any other physical or mental quality.
- The organisation and employees should act consistently.
- If issues relate to conduct, the disciplinary procedure should be followed
- The organisation will normally try to deal with performance issues informally through one-to-one discussions and development plans. When the informal approach fails to resolve the performance issue the formal capability process will be followed.
- If employees are subject to the formal procedure, the organisation will inform you of the standards of performance you are not reaching and the opportunities, and support, you have had in order to improve.
- The organisation will explain clearly where you are not reaching the standards required, and the possible implications of consistent underperformance.

- Employees have the right to be accompanied by a staff member or trade union representative at any informal/formal capability meetings
- In cases of gross negligence, or where there are serious concerns over your performance that raise the risk to patients or service users, or poor performance with deliberate intent, consideration may be given to whether this a capability and performance or discipline issue. You will be advised of which policy and formal procedure will be followed.

1.4 Legal considerations

The ACAS Code of Practice on disciplinary and grievance procedures sets out principles for handling disciplinary and grievance situations in the workplace. Employment tribunals are legally required to take the Code into account when considering relevant cases.

Most of the provisions governing unfair dismissal are to be found in the Employment Rights Act 1996 as amended. Numerous other pieces of legislation cross refer to unfair dismissal issues.

2.0 THE POLICY

2.1 Informal Discussions

Wherever possible, an initial discussion should be held between the employee and their manager. It is in everyone's best interest for an issue to be dealt with quickly and fairly at the earliest opportunity, and it is anticipated that the majority of concerns will be resolved at this stage. The employee and the line manager should keep a note of the discussion.

The discussion and notes should include the employees development plan, the advice they have been given, and will ensure that the individual is clear what the concerns are and provide a foundation to review the performance.

2.2 Inform the employee of the problem

In some cases, where an informal discussion has failed to achieve the necessary improvements in performance, or where the nature of concerns relating to an employee's capability were not considered appropriate to be addressed informally, there will be a need to formally follow the Capability and Performance Policy.

The employee should be notified of this in writing. This notification should contain sufficient information about the alleged under performance and/or capability and its possible consequences and invite them to attend an initial capability and performance meeting. This meeting should usually be held with the employee and their line manager.

The notification should also give details of the time and venue for the capability and performance meeting and advise the employee of their right to be accompanied at the meeting.

2.3 Allow the employee to be accompanied at the hearing

This policy gives employees the right to be accompanied by a companion at each stage of the process. The chosen companion may be a CCG employee or a recognised trade union representative not acting in a legal capacity.

Employees must make a reasonable request to be accompanied and what is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing. Nor would it be reasonable for the worker to delay proceedings because their chosen companion was not available within a reasonable time scale (usually within 5 days of the original meeting).

The companion should be allowed to address the hearing to put and sum up the employees case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

a) Stage One (formal performance review)

The meeting should be held without unreasonable delay following the individual being notified of the problem. The employee (and their companions) should make every effort to attend the meeting.

At the meeting the line manager should explain the issues relating to the employees performance and capability and go through any evidence that has been gathered.

The employee should be allowed to answer any allegations that have been made and be given a reasonable opportunity to ask questions, respond to the concerns mentioned and offer any explanations or mitigations for the underperformance or capability concerns. This is the employee's opportunity to raise any issues that they believe may have affected their performance.

If it is decided that there is a need to develop performance or monitor an employee's capability to do their job a development plan will be drawn up in consultation with the employee that will have clear and achievable objectives for them to achieve within a set timescale.

Employee's will also be informed that if their performance does not improve to the agreed standard set within their development plan, then further action will be taken in accordance with this policy, which could result in a second period of performance monitoring being set. The outcome of the meeting shall be provided to the employee in writing within 10 days of the meeting and a copy will be placed on the individual's personal file.

b) Stage 1 Review (Reviewing Progress)

Within the agreed timescales a review meeting will take place with the employee's manager and they will discuss and formally review their performance.

Specifically the employee's development plan should be reviewed along with the employee's performance against their objectives that were put in place, and any supporting evidence that is available. The employee should be allowed to have a reasonable opportunity to ask questions and offer any explanations or mitigations for the underperformance or capability concerns. This is a further opportunity for the employee to raise any issues that they believe may have affected their performance.

If sufficient improvement has not been made the individual will be advised at the meeting that they will be entering a second review period called 'Stage 2'

If the employee's performance has improved sufficiently, this will be recognised by their manager at the review meeting.

The outcome of the Stage 2 will be confirmed in writing to the individual within 10 working days of the meeting, a copy will be placed on the personal file.

c) Stage 2 (Second review period)

If the individuals' performance has not improved the employee will be advised at the Stage 1 Review Meeting that they will be entering a second review period.

Once again, the line manager should explain the reason for this and outline the issues relating to the employees performance and capability and go through any evidence that has been gathered.

The employee's development plan will be reviewed and updated if necessary and in consultation with the employee, once again clear, realistic and achievable objectives will be set for them to meet within a set timescale.

The employee will also be informed that if their performance does not improve to the agreed standards set within their development plans, then further action will be taken in accordance with this policy, which could result in their dismissal from the organisation.

The employee will receive a letter within 10 working days of the meeting outlining the decisions made at the meeting, the areas of performance that need to improve, details of any development plans and clear objectives that they will need to achieve by the next review date.

d) Stage 2 Review (Reviewing Progress)

Within the agreed timescales a Stage 2 review meeting will take place with the employee's manager and they will discuss and formally review their performance.

The employee's development plan should be reviewed again along with the employee's performance against their objectives that were put in place, and any supporting evidence that is available. The employee should be allowed to have a reasonable opportunity to ask questions and offer any explanations or mitigations for the underperformance or capability concerns. This is a further opportunity for the employee to raise any issues that they believe may have affected their performance.

If the employee's performance has improved sufficiently, this will be recognised by their manager at the review meeting. They will be informed of the outcome in writing within 10 working days and a copy will be placed on their personal file to show the completion of the process and the improvements made.

If performance has not improved and it is decided that further action is necessary, the employee must be notified of this in writing within 10 working days. This notification should contain sufficient information about the underperformance and/or capability to fulfil the job requirements and the process that will follow, and possible outcomes. This will enable the employee to prepare to answer the case at a capability hearing.

The manager would normally summarise the support made available, the improvements and challenges faced into a management report to enable consideration at a panel. It would normally be appropriate to provide copies of any written evidence or report to the individual in advance of the hearing.

e) Stage 3 (Capability Hearing)

The hearing should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. Employers and employees (and their companions) should make every effort to attend the hearing. In some circumstances it may be appropriate to hear the case in the employee's absence, or the absence of a companion. This decision shall be made on a case by case basis on the merits of its own individual circumstance.

At the hearing the management side should explain the areas of underperformance and concerns relating to capability to fulfil the job requirements and present the evidence that has been gathered.

The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. The employee should also be given the opportunity to raise points about any information provided by witnesses. Where an employer

or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

After the hearing a decision on whether or not any action is justified will be taken and the employee will be informed accordingly in writing within 10 working days. Where continued unsatisfactory performance, or incapability to perform their job is confirmed, a decision to dismiss may be taken. This should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Alternative sanctions that may be more appropriate may include a further period of monitoring and development, demotion, change of role, or restriction on certain duties.

Where an employee is persistently unable or unwilling to attend a capability meeting or hearing without good cause the employer should make a decision on the evidence available.

2.4 Authority

| Outcome | Panel |
|---|---|
| Stage 1 | Line Manager |
| Stage 2 | Line Manager with support from HR where appropriate |
| Stage 3 (where the outcome is likely to result in a dismissal) | Director, HR Professional and Independent manager |
| Appeal | All appeal panels must be comprised of individuals not already involved in the case. Director and HR Professional for Stage 1 and Stage 2 Director, Independent manager and HR professional for Dismissal appeals |

Where disciplinary action is being considered against a senior manager where there are no managers more senior that are independent consideration will be given to approaching regulator organisations or partner organisations to Chair a panel to decide on appropriate action.

2.5 Appeal

Where an employee feels that the action taken against them is wrong or unjust they should appeal against the decision in writing, within 10 working days of the formal meeting, or 5 working days of receipt of the outcome letter (whichever is greater). Appeals should be heard within 15 working days and ideally at an agreed time and place. Employees must let employers know the grounds for their appeal in writing.

The appeal will be dealt with impartially and by a manager who has not previously been involved in the case. Workers have a statutory right to be accompanied at appeal hearings. Following an appeal the original decision will be confirmed, revoked or replaced with a different decision. The final decision will be confirmed in writing, within 10 working days of the appeal meeting. There is no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of continuity or pay.

2.6 Special cases

The same principles apply for Trade Union Representatives. However, if agreeable to the employee, early discussions with Trade Union Officials may take place in advance of a formal hearing.

2.7 Equality Statement

In applying this policy, the organisation will have a due regard for the need to eliminate unlawful discrimination, promote equality of opportunity and provide for good relations between people of diverse groups. In particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation, in addition to offending background, trade union membership or any other personal characteristic.