



Performance and Capability at Work Policy

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Performance and Capability at Work Policy

1. INTRODUCTION

- 1.1 This document sets out the policy operated by the Company to address:
- (a) poor performance due to incapability;
 - (b) persistent short-term absence; and
 - (c) long-term ill-health capability.
- 1.2 This policy [has been agreed in consultation with trade union representatives OR the staff association OR employees and] applies to all employees.
- 1.3 This policy intends to provide a framework for dealing with matters in a fair, supportive and consistent manner. It is intended only as a statement of the Company's policy and does not form part of any contract of employment or otherwise have contractual effect. The Company reserves the right to make additions or alternations to the policy from time to time and you will be notified of any such additions or alterations.
- 1.4 Where appropriate, reference to the Company includes references to all group companies.

2. CAPABILITY PROCEDURE: POOR PERFORMANCE/PERSISTENT SHORT-TERM ABSENCE

The Company recognises the importance of dealing with capability issues without undue delay. The following procedure may be followed if you are under-performing or have been persistently absent for short periods.

Objective

The purpose of the capability procedure, where you are failing to perform to a satisfactory level or have been persistently absent for short periods, is to encourage and assist you to improve your performance or attendance to a level acceptable to the Company.

Principles

- (a) The Company recognises the importance of adhering if possible, to the following requirements when implementing this capability procedure:
 - (i) a full discussion of the situation with you.
 - (ii) an identification of any problems or difficulties being experienced by you and an exploration of possible causes of the problems/difficulties.
 - (iii) the provision of help and assistance where practicable to improve the situation.
 - (iv) a full discussion of the possible consequences of there being insufficient improvement in your performance/absence levels.
 - (v) the provision of a reasonable amount of time to achieve the improvements required by the Company; and
 - (vi) a review of your progress.
- (b) It should be stressed that, since the circumstances of each case are likely to be different, the action taken in each case will be action that is appropriate taking into

account the particular circumstances. In the case of an issue regarding your performance, your line manager will be involved in any discussions.

- (c) At each stage of the procedure where appropriate we will consider whether the unsatisfactory performance/attendance is related to a disability and if so whether there are any reasonable adjustments that could be made to assist you.
- (d) If you or your chosen companion has any difficulty at any stage of the procedure because of a disability or medical condition, you should contact your Manager.

Suspension

If the Company has any grounds to believe that your performance is falling short of the required minimum standard to the extent that the Company has any grounds to consider that its property or responsibilities to other parties are at risk, the Company will be entitled to suspend you on full pay. Any such suspension will normally last only as long as required to enable an investigation into the circumstances giving rise to such belief of sub-standard performance to be carried out and any capability meeting to be convened. Any such period of suspension is not a punishment nor considered as disciplinary action against you.

Mediation

In some cases, the Company may decide that it is appropriate to use an internal or external mediator, as part of or alongside the capability process, to help you and the Company to reach agreement on the best way forward. The Company will seek your agreement prior to any mediation being commenced.

Attendance at capability meetings and appeal hearings

You should make every effort to attend any capability meeting (including any appeal hearing). If either you or the person accompanying you cannot attend on the proposed date for the meeting, you may suggest a reasonable alternative date, which must be within five working days of the date first proposed. This five-day time limit may be extended by mutual agreement between you and the Company. If you fail to attend any re-arranged meeting without good cause, the Company will be entitled to make a decision on the evidence available at the re-arranged meeting, in your absence.

Right to be accompanied

- (e) You are entitled to be accompanied at any capability meeting (including any appeal hearing) by a fellow work colleague of your choice, or a trade union representative who meets the statutory requirements. Please note that it is your responsibility to secure the attendance of any fellow work colleague. You may not be accompanied by:
 - (i) any other person, such as a relative, without the prior agreement of the Company;
 - (ii) a legal representative;
 - (iii) a person whose presence the Company reasonably considers would prejudice the hearing; or
 - (iv) a person from a remote geographical location if someone suitable and willing is available on site.
- (f) The person accompanying you is entitled to address the meeting to put and sum up your case, respond on your behalf to any views expressed at the hearing and confer with you during the hearing. The person accompanying you does not have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the Company from explaining its case. Any work colleague whom you

have requested to accompany you will be given a reasonable amount of paid time off to prepare for and attend the meeting.

Invitation to capability meeting

- (g) You will receive advance written notice of a capability meeting from the Company.
- (h) This letter or notice will:
 - (i) set out the nature of your apparent failure to meet the required minimum standard of performance/attendance and what is to be discussed at the meeting in sufficient detail to enable you to respond appropriately;
 - (ii) advise you of the possible consequences of your apparent failure to meet the required minimum standard of performance/attendance;
 - (iii) set out the date, time and place of the meeting;
 - (iv) advise of your right to be accompanied at the meeting; and
 - (v) provide copies of any supporting evidence on which the Company intends to rely.

Capability meeting

- (i) A capability meeting will be convened as soon as reasonably practicable after you have had a reasonable opportunity to consider the information provided with the notice of the meeting. No decision will be made as to whether any capability action is to be taken or the nature of any capability action to be taken before the meeting takes place.
- (j) Where possible, the meeting will usually be heard and chaired by your Manager of the Company (the Chairperson).
- (k) Where possible, another manager or member of the Company's HR department will be present at the meeting to take notes.
- (l) At the meeting, the Chairperson will explain the nature of your alleged failure to meet the required minimum level of performance/attendance and go through the evidence that has been gathered. The Chairperson will ensure that you fully understand why your performance/absence levels are considered to be unacceptable. You will have an opportunity to state your case in relation to the allegations and challenge any evidence produced in support of the allegations by the Company. You will be permitted to ask questions, present evidence and call witnesses (provided that the Chairperson is notified in advance of the hearing of the names of such witnesses and their relevance to the allegations). You will also be given an opportunity to raise points about any information provided by witnesses. Any witness you have requested to attend a hearing with you who is a fellow work colleague will be given a reasonable amount of paid time off work to prepare for and attend the meeting.
- (m) The proceedings, any statements and all documents and records relating to capability meetings will be kept confidential.

Adjournment

The Chairperson will have discretion to adjourn any capability meeting (including any appeal hearing) as appropriate at the reasonable request of the Company or you or otherwise as he, at his discretion, deems necessary.

Decision

- (n) At the end of the capability meeting, the Chairperson will normally adjourn before making a decision. Following the adjournment, the Chairperson may issue an oral decision. If the Chairperson is unable to reach an immediate decision following the meeting, he is entitled to deliberate on the meeting prior to issuing a decision in writing. In any event, written notification of the outcome of the meeting will usually be sent to you within five working days of the meeting, or as soon as reasonably practicable, together with an explanation of any capability action to be taken and notification of your right to appeal.
- (o) Any decision taken by the Chairperson may include the imposition of a monitoring period during which the performance/attendance levels will be expected to improve.

Levels of capability action

- (p) Very minor cases of unsatisfactory performance/absence will be dealt with informally with the objective of improving your performance/attendance. Where the matter is more serious or where you have failed to improve your performance/attendance to an acceptable level, formal action will be taken as described below.
- (q) There are three levels of capability action. Other than in extremely rare cases, you will not normally be dismissed for a first instance of poor performance or unacceptably low levels of attendance. The Company reserves the right to take action at any level, or to skip levels, depending on the circumstances of the case.

Level 1–Improvement note

In cases of poor performance or unacceptably low levels of attendance, you may initially be given an improvement note. This will give the following information:

- (A) an explanation of the reasons for the improvement note.
- (B) an explanation of the improvements in performance/attendance required.
- (C) the timescale for making these improvements.
- (D) any support the Company will provide to assist you.
- (E) an explanation of the consequences of any repetition of the poor performance/attendance or failure to improve the performance/attendance to an acceptable level; and
- (F) advice as to your right to appeal against the capability decision.

During the review period given in the improvement note, your performance/attendance will be monitored and at the end of the review period, the Company will inform you of the next step:

- (G) if the Company is satisfied with your performance or levels of attendance, no further action will be taken.
- (H) if the Company is not satisfied with your performance/attendance, further action may be taken; or
- (I) where appropriate, the review period may be extended.

An improvement note will normally remain in force for six months and a copy of the improvement note will be kept on your personnel record. It will normally be disregarded for capability purposes after a period of six

months, or any other period specified in the improvement note, subject to satisfactory performance/attendance during that time, but will form a permanent part of your personnel record.

Level 2–Final written warning

In the event of a failure to improve or change performance/absence levels during the currency of a prior improvement note, or where the poor performance/attendance is sufficiently serious to warrant only one written warning, a final written warning may be given to you. This will give the following information:

- (J) an explanation of the reasons for the warning.
- (K) an explanation of the improvements required.
- (L) the timescale for making these improvements.
- (M) any support the Company will provide to assist you.
- (N) an explanation that any repetition of the poor performance/attendance or failure to improve performance/attendance to an acceptable level will render you liable to dismissal; and
- (O) advice as to your right to appeal against the capability decision.

During the review period given in the final written warning, your performance/attendance will be monitored and at the end of the review period, the Company will inform you of the next step:

- (P) if the Company is satisfied with your performance or levels of attendance, no further action will be taken.
- (Q) if the Company is not satisfied with your performance/attendance, further action may be taken; or
- (R) where appropriate, the review period may be extended.

The final written warning will normally remain in force for 12 months and a copy of the final written warning will be kept on your personnel record. In exceptional cases, depending upon the seriousness and nature of the poor performance/attendance, the period that the final written warning remains in force may be longer. The final written warning will normally be disregarded for capability purposes after 12 months, subject to satisfactory performance/attendance during that time, but will form a permanent part of your personnel record.

Level Stage 3–Dismissal or other sanction

In the event of a failure to improve or change performance/absence levels during the currency of a prior warning, or where performance/absence is sufficiently serious to warrant dismissal, dismissal will normally result.

A decision to dismiss will only be taken by a manager who has the authority to do so.

In the case of dismissal (including summary dismissal), you will, as soon as is reasonably practicable, be provided with written confirmation of the dismissal which will set out the following:

- (S) details of the reason for the dismissal.
- (T) the date on which the employment terminated or will terminate.
- (U) the appropriate period of notice or pay in lieu of notice (if any); and
- (V) advice as to your right to appeal against the dismissal.

Action other than dismissal

If a sanction other than dismissal is to be imposed (e.g. demotion), you will, as soon as is reasonably practicable, be provided with written confirmation of the action to be taken, how the action is to be implemented, the reason for it, the date on which it will come into force (if appropriate) and information on your right to appeal.

Summary dismissal

If your performance/absence justifies it the Company may summarily dismiss you without any previous warning(s) having been given.

Appeals

- (r) If you wish to appeal against a capability decision you must inform the Chairperson in writing within five working days of receiving notification of the capability decision. Your written notification should specify the ground(s) for the appeal. If you wish to produce additional evidence to support your case, then this must be provided to the Chairperson in advance of the appeal hearing.
- (s) All appeals will be dealt with as promptly as possible and a date will be set for the appeal hearing as soon as is reasonably practicable after the Chairperson has received written notification of your appeal. The appeal will be heard as soon as is reasonably practicable.
- (t) Wherever possible, the appeal will be heard by the Director OTHER DESIGNATED PERSON of the Company who has not been involved in the capability meeting and/or who is more senior than the person who heard the capability hearing (the Appeal Chairperson). If there is no internal person available to hear the appeal, an external consultant may act as Appeal Chairperson.
- (u) You will be informed of the arrangements for the appeal hearing, confirmation of the Appeal Chairperson, details of any other representative of the Company who will be present (where possible, another manager or member of the Company's HR department will be present at the meeting to take notes) and of the right to be accompanied at the appeal hearing. The Company will inform you if any witnesses are to attend the appeal hearing on behalf of the Company.
- (v) You must advise the Appeal Chairperson in advance of the appeal hearing of the name and relevance of any witness you intend to bring to the appeal hearing on your behalf. Any work colleague you have requested to accompany you or to

appear as a witness for you will be given a reasonable amount of paid time off work to prepare for and attend the appeal hearing.

- (w) At the appeal hearing, you will be asked to present your appeal to the Appeal Chairperson.
- (x) The Appeal Chairperson will confirm to you in writing the outcome of the appeal hearing, usually within five working days of the appeal hearing, or as soon as is reasonably practicable.
- (y) The Appeal Chairperson's decision will be final. There is no further right of appeal.

3. CAPABILITY PROCEDURE: LONG-TERM ABSENCE

The Company recognises the importance of dealing with capability issues without undue delay. The following procedure may be followed if you have been absent from work on a long-term basis due to ill-health.

Objective

The purpose of this procedure, in relation to someone who has been absent from work for a single, long period of absence, is to ensure that the Company gives you full encouragement and assistance in relation to your return to work. Where appropriate, the Company will consider redeployment or retraining and/or reasonable workplace adjustments.

Principles

- (a) The Company will endeavour to maintain regular contact with you throughout the period of absence (subject to any medical evidence that may be received to the contrary indicating that such contact may be harmful to you).
- (b) If not already known, the Company will ascertain the reason for the absence from you (by way of a meeting with you, if possible). If you are absent, this meeting may need to take place at your home at a time and date convenient to you. You will be informed of the reason for the meeting and may be accompanied by a work colleague or trade union representative.
- (c) It should be stressed that, since the circumstances of each case are likely to be different, the action taken in each case will be the action that is appropriate, taking into account the particular circumstances. The Company reserves the right to vary the procedures set out below, or to jump stages, taking into account the particular circumstances.

Ill-health retirement

It is usual practice for the Company to explore the possibility of ill-health retirement with the employee prior to implementing a dismissal on grounds of capability. Ill-health retirement is subject at all times to the rules of the relevant pension scheme.

Investigation: medical reports

- (d) The Company will seek to understand your medical condition, and this will be done by seeking consent from you to:
 - (i) contact your GP; and/or
 - (ii) obtain a report from the Company's own doctor, an independent occupational health consultant or other appropriate medical advisers.
- (e) You will be informed of your rights under the Access to Medical Reports Act if the Company requests a report from your GP and the GP's report will only be sought

with your permission. You may ask to see the report before it is supplied to the Company and ask for corrections to be made to the report.

- (f) In the event that you do not provide the information sought or permission is refused, the Company may proceed on the basis of the information available.
- (g) The opinion of your GP and any other medical adviser will be obtained on various matters including the following:
 - (i) the nature of your illness.
 - (ii) how long the illness is likely to last.
 - (iii) if, and when, you will be able to return to your current role.
 - (iv) whether there are any reasonable adjustments the Company should make to assist you in a return to work; and
 - (v) whether your illness falls within the definition of disability in terms of the Equality Act 2010.

This is a non-exhaustive list of issues which may be considered and requests for information will be tailored to the individual circumstances of each case.

- (h) The Company will endeavour to meet with you to discuss the terms of the medical reports obtained, any recommendations made in them, whether any measures can be taken by the Company to assist you in returning to work and your own view on the situation.

Attendance at capability meetings and appeal hearings

You should make every effort to attend any capability meeting (including any appeal hearing). If, because of your medical condition, special arrangements need to be made you should inform the Company in advance. If either you or the person accompanying you cannot attend on the proposed date for the hearing, you may suggest a reasonable alternative date, which must be within five working days of the date first proposed. This five-day time limit may be extended by mutual agreement between you and the Company. If you fail to attend any re-arranged meeting without good cause, the Company will be entitled to make a decision on the evidence available at the re-arranged meeting in your absence.

Right to be accompanied

- (i) You are entitled to be accompanied at any capability meeting (including any appeal hearing) by a fellow work colleague of your choice or trade union representative who meets the statutory requirements. Please note that it is your responsibility to secure the attendance of any fellow work colleague at any meeting. You may not be accompanied by:
 - (i) any other person, such as a relative, without the prior agreement of the Company.
 - (ii) a legal representative.
 - (iii) a person whose presence the Company reasonably considers would prejudice the hearing, or
 - (iv) a person from a remote geographical location if someone suitable and willing is available on site.
- (j) The person accompanying you is entitled to address the hearing to put and sum up your case, respond on your behalf to any views expressed at the hearing and confer with you during the hearing. The person accompanying you does not have

the right to answer questions on your behalf, address the hearing if you do not wish it or prevent the Company from explaining its case. Any work colleague who you have requested to accompany you will be given a reasonable amount of time off to prepare for and attend the hearing.

Invitation to capability meeting

- (k) The Company may convene a capability meeting at any time. You will receive advance written notice of a capability meeting from the Company. This letter or notice will:
 - (i) set out the reasons for holding the meeting and what is to be discussed at the meeting in sufficient detail to enable you to respond appropriately.
 - (ii) set out the date, time and place of the meeting.
 - (iii) advise of your right to be accompanied at the meeting.
 - (iv) provide copies of any supporting evidence on which the Company intends to rely; and
 - (v) notify you that a potential outcome of the meeting could be dismissal on the grounds of ill-health capability.

Capability meeting

- (l) A capability meeting will be convened as soon as reasonably practicable after you have had a reasonable opportunity to consider the information provided with the notice of the meeting.
- (m) Where possible, the meeting will usually be heard and chaired by a Manager of the Company (the Chairperson).
- (n) Where possible, another manager or member of the Company's HR department will be present at the meeting to take notes.
- (o) At the meeting, the Company will consider the matter fully, including whether:
 - (i) any recommended adjustments are viable.
 - (ii) there is a possibility of you moving to alternative roles/duties/working arrangements.
 - (iii) a further medical report is necessary; and
 - (iv) dismissal is an appropriate outcome.
- (p) In taking a decision as to what action may be taken in relation to your absence, the Company may consider:
 - (i) the nature of the medical condition and prognosis.
 - (ii) the medical evidence.
 - (iii) the effect of continued absence on the efficient operation of the business; and
 - (iv) your representations on the situation.

Adjournment

The Chairperson will have discretion to adjourn any capability meeting (including any appeal hearing) as appropriate at the reasonable request of the Company or you or otherwise as he, at his discretion, deems necessary.

Decision

- (q) At the end of the capability meeting, the Chairperson will normally adjourn before making a decision. Following the adjournment, the Chairperson may issue an oral decision. If the Chairperson is unable to reach an immediate decision following the meeting, he is entitled to deliberate on the meeting prior to issuing a decision in writing. In any event, written notification of the outcome of the hearing will usually be sent to you within five working days of the meeting, or as soon as reasonably practicable, together with an explanation of any capability action to be taken and notification of your right to appeal.
- (r) The letter will inform you:
 - (i) of any action to be taken by the Company.
 - (ii) of any arrangements to monitor the situation; and
 - (iii) as to your right to appeal against the capability decision.
- (s) The proceedings, any statements and all documents and records relating to capability meetings will be kept confidential.

Termination of employment

- (t) A possible outcome of a capability meeting would be dismissal on grounds of capability.
- (u) Where appropriate, the Company will also consider transfer to another position or a change in your working arrangements as an alternative to dismissal.

Appeals

- (v) If you wish to appeal against a capability decision, you must inform the Chairperson in writing within five working days of receiving notification of the capability decision. Your written notification should specify the ground(s) for the appeal. If you wish to produce additional evidence to support your case, then this must be provided to the Chairperson in advance of the appeal hearing.
- (w) All appeals will be dealt with as promptly as possible and a date will be set for the appeal hearing as soon as is reasonably practicable after the Chairperson has received written notification of your appeal. The appeal will be heard as soon as is reasonably practicable.
- (x) Wherever possible, the appeal will be heard by a manager or director OR OTHER DESIGNATED PERSON of the Company who has not been involved in the capability meeting and/or who is more senior than the person who heard the capability hearing (the Appeal Chairperson). If there is no internal person available to hear the appeal, an external consultant may act as Appeal Chairperson.
- (y) You will be informed of the arrangements for the appeal hearing, confirmation of the Appeal Chairperson, details of any other representative of the Company who will be present (where possible, another manager or member of the Company's HR department will be present at the meeting to take notes) and of the right to be accompanied at the appeal hearing. The Company will inform you if any witnesses are to attend the appeal hearing on behalf of the Company.
- (z) You must advise the Appeal Chairperson in advance of the appeal hearing of the name and relevance of any witness you intend to bring to the appeal hearing meeting on your behalf. Any work colleague you have requested to accompany you

or to appear as a witness for you will be given a reasonable amount of time off work to prepare for and attend the appeal hearing.

- (aa) At the appeal meeting, you will be asked to present your appeal to the Appeal Chairperson.
- (bb) The Appeal Chairperson will confirm to you in writing the outcome of the appeal hearing usually within five working days of the appeal hearing, or as soon as is reasonably practicable.
- (cc) The Appeal Chairperson's decision will be final. There is no further right of appeal.