

15 Capability

1. Purpose and Scope

- 1.1. This Policy and the Procedures that follow apply to an employee whose performance falls below the standards that are required (the Job Holder).
- 1.2. This Procedure seeks to bring about improvements in the accuracy, quality or quantity of a Job Holder's work whilst ensuring that the employee in question is treated fairly, consistently and with respect.
- 1.3. These Procedures are not contractual: they may be varied, amended or withdrawn as necessary (e.g. in response to changes in the law, best practice and/or as reasonably required by the operational aspects of the Company's business).
- 1.4. The Procedures apply to all employees but may be departed from in the case of an employee who has less than two years continuous service.
- 1.5. The Company's Performance Management Policy will establish the standards expected of all employees, monitor performance, and where it is reasonable to do so provide employees with appropriate training and support.
- 1.6. The Company's management will make employees aware of any shortfall in their performance as part of routine, ongoing Performance Management. This will often be sufficient to enable a Job Holder to address any areas of under-performance without the need for any further action to be taken by the Company.
- 1.7. If the Company's management has a serious concern about a Job Holder's performance that is not amenable to being addressed as part of routine Performance Management, then this Procedure will engage.
- 1.8. It is important to the Company's operation, and for the delivery of an acceptable level of service to its clients, that serious performance concerns are addressed without delay. Accordingly, these Procedures may engage at any time in the Performance Review Cycle.
- 1.9. Normal Performance Management under the Performance Review Policy shall be overridden by these Procedures and will only re-commence if and when the Job Holder has achieved a satisfactory level of performance and these Procedures no longer apply.
- 1.10. If the Company's management believes a Job Holder is intentionally or negligently underperforming, it may choose to use its Disciplinary Policy in preference to these Procedures.
- 1.11. This Policy will be applied fairly and consistently to all employees regardless of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation, fixed term or part time status.

2. General Principles

- 2.1. All persons involved in these Procedures must keep information that relates to a Job Holder's performance and any Procedure being followed strictly confidential.

- 2.2. A Job Holder who is subject to the Procedures that follow will be given any support, mentoring, guidance, training and counselling that is reasonable in all the circumstances. However, it is equally important that the Job Holder demonstrates an ability to achieve a satisfactory level of performance independently and without relying unduly upon others to support or augment the performance of his/her job functions.
- 2.3. If a Job Holder is unable to take part, or fails to take part, in the Procedures, they may continue in that person's absence. If this is necessary the Job Holder will be invited to provide any submissions they wish to make, in writing, and these will be considered before a decision is reached.

3. Trigger Events

- 3.1. This Policy will engage in the following circumstances:
 - The Job Holder's performance is assessed at 'E' Cause for Concern in any Review Area at a Review Meeting.
 - The Job Holder's performance is assessed at 'D' Improvement Required in a Review Area in two consecutive Review Meetings.
 - The Company's management has a serious concern about a Job Holder's performance that is not amenable to being addressed as part of routine Performance Management.

4. Time Frames

- 4.1. The Procedures that follow will usually be completed within a period of between 10 and 16 weeks.
- 4.2. If a problem with a Job Holder's performance is successfully addressed under these Procedures but subsequently deteriorates to an unacceptable level once again, the Procedures will re-commence at the point at which they were left.
- 4.3. The Company may adopt the 'Fast Track' Procedure at any time if:
 - It becomes apparent that inadequate performance by a Job Holder directly produces a serious and unacceptable detriment to: the clients or the running of the Company; and
 - The Job Holder has been notified or should reasonably be aware of the area/s of concern; and
 - The Job Holder has been given counselling and/or informal support to assist them to achieve the required level of performance if it is appropriate in all of the circumstances.
- 4.4. In the Fast Track Procedure a Review Period of 4 weeks operates.

5. Informal Meetings

- 5.1. Meetings between the Company's management and a Job Holder to discuss or investigate issues or provide guidance, support or direction are 'Informal Meetings'.

- 5.2. It is important for employees and Managers to note that an Informal Meeting cannot result in any of the following without a Formal Meeting having first taken place:
- The Job Holder being issued with a warning
 - A decision to dismiss the Job Holder
- 5.3. Employees have no entitlement to be accompanied at Informal Meetings. If an employee feels that special circumstances render it reasonable and necessary for a companion to be present, then the Company's management will give consideration to any reasons put forward and consider allowing the employee to be accompanied.
- 5.4. If the Company's management agrees to allow an employee to be accompanied at an Informal Meeting, this will not set a precedent for similar cases, or at all.

6. Formal Meetings

- 6.1. A meeting that may result in a warning or dismissal will be a Formal Meeting.
- 6.2. A Job Holder shall be invited to a Formal Meeting, in writing, a reasonable amount of time before the meeting is to take place.
- The invite letter will notify the Job Holder of the following:
 - The issues to be discussed at the meeting;
 - The person/s who will conduct the meeting;
 - Any sanction that may be imposed at the end or after the meeting, and;
 - That a Companion may attend with the Job Holder.
- 6.3. The Job Holder will normally be provided with copies of any documents that are relevant to the issues to be discussed a reasonable amount of time before the meeting is to take place.
- 6.4. The Job Holder may be accompanied to a Formal Meeting by a Trade Union Representative, an official employed by a Trade Union, or a work colleague (hereafter referred to as 'the Companion') provided they make a reasonable request for this. The Job Holder is not entitled, and shall not be permitted, to be accompanied by any person who is not a Companion as defined in this paragraph.
- 6.5. The outcome of a Formal Meeting will be notified or confirmed to the Job Holder in writing within a reasonable amount of time after the meeting has taken place and the Job Holder will be reminded of any right to appeal against an adverse decision.

7. Review Meetings

- 7.1. If the Company has a concern regarding a Job Holder performance a 'Review Meeting' will take place. Depending upon the possible outcome to this meeting, it may be an Informal Meeting or a Formal Meeting.
- 7.2. At a Review Meeting the person who is appointed to deal with the matter shall identify the area/s of concern and wherever possible provide the Job Holder with examples of how he/she is believed to have performed inadequately.

- 7.3. Areas of concern should be linked to the items on the Performance Review Form; these are:
- SMART Objectives;
 - Key Duties and Responsibilities;
 - Key Knowledge, Skills, Experience and Attributes; and
 - General Performance Indicators.
- 7.4. The Job Holder will then be given an opportunity to comment on: the area/s of concern; the examples given; and their performance over the period in question.
- 7.5. The Job Holder will be asked to agree or disagree that the concern/s discussed are legitimate and such that their performance needs to improve.
- 7.6. If the Job Holder disagrees that their performance is below the standard reasonably required, a note of the reasons given for this should be taken and a decision reached about whether or not the next step in the Procedure should be followed.
- 7.7. If it becomes apparent that a decision about the next step cannot be fairly taken without further investigation then any reasonable further investigation must first be undertaken before this decision is made.

8. Review Periods

- 8.1. Review Periods in these Procedures shall comply with the following requirements:
- 8.2. A Review Period will be sufficient in duration to meaningfully capture a fair representation of the Job Holder's performance in relation to each Review Criterion to be measured. A Stage 1 Review Period will normally be 8 weeks in duration. A Stage 2 Review Period and a Fast Track Review Period will normally be 4 weeks in duration.
- 8.3. The duration of any Review Period will be discussed with the Job Holder and their views on the necessary duration of the Review Period will be given consideration when this is set.
- 8.4. The duration of any Review Period will be notified to the Job Holder so that they are fully aware of the timescale within which a measurable improvement in their performance is required.

9. Normal Review Procedure – Stage 1

- 9.1. The Job Holder will be invited to a Review Meeting which will proceed as set out above. This is the first meeting in the Stage 1 Procedure and will be an Informal Meeting.
- 9.2. Following the Review Meeting the Job Holder will receive written confirmation of the areas of concern raised and the Review Period that will operate.
- 9.3. At the end of the Review Period the Job Holder will be invited to a further Review Meeting to discuss his/her performance during the Review Period.

- 9.4. If prior to this Review Meeting it appears that the Job Holder's performance has not improved sufficiently and accordingly a possible outcome of this meeting is a decision to issue a warning, then this will be a Formal Meeting.
- 9.5. If prior to this Review Meeting it is clear that the Job Holder's performance has improved as required and that no warning need be issued, then the meeting will be an Informal Meeting at which the Job Holder will be notified that these Procedures will no longer apply.

10. Normal Review Procedure – Stage 2

- 10.1. The second Review Meeting under Stage 2 will take place to discuss perceived inadequate performance during a Review Period and may result in a decision to issue a warning so it will be a Formal Meeting.
- 10.2. The Review Meeting will include a discussion about the assessment of the Job Holder's performance against the Objectives that were set.
- 10.3. If the result of the Review Meeting is a decision that the Job Holder's performance has not improved sufficiently, then the Job Holder will be issued with a warning that if their performance does not improve during a further Review Period then this may result in a decision to terminate employment.
- 10.4. Following the Review Meeting the Job Holder will receive written confirmation of the areas of concern raised and the further Review Period that will operate.
- 10.5. At the end of this Review Period the Job Holder will be invited to a further Review Meeting to discuss their performance during the Review Period.
- 10.6. If prior to the Review Meeting it appears that the Job Holder's performance has not improved sufficiently and accordingly a possible outcome of this meeting is a decision to terminate the Job Holder's employment or issue a further warning, then this will be a Formal Meeting. See 'Review Meetings That May Result in Dismissal' below.
- 10.7. If prior to the Review Meeting it is clear that the Job Holder's performance has improved as required and that no warning need be issued, then the meeting will be an Informal Meeting at which the Job Holder will be notified that these Procedures will no longer apply.

11. Fast Track Procedure

- 11.1. Where appropriate (see above) the Job Holder will be first be invited to a Review Meeting to discuss their performance. A possible outcome of this meeting will be a decision to issue the Job Holder with a warning this will be a Formal Meeting.
- 11.2. If the result of the Review Meeting is a decision that the Job Holder's performance is inadequate as defined in paragraph 4.3 above, then the Job Holder will be issued with a first and final warning that if their performance does not improve during a Review Period then this may result in a decision to terminate employment.

- 11.3. Following the Review Meeting the Job Holder will receive written confirmation of the areas of concern raised, the further Review Period that will operate and details of any warning that may be appropriate.
- 11.4. The Review Period in a Fast Track case should be no less than 4 weeks in duration.
- 11.5. At the end of the Review Period the Job Holder will be invited to a further Review Meeting to discuss his/her performance during the Review Period.
- 11.6. If prior to the Review Meeting it appears that the Job Holder's performance has not improved sufficiently and accordingly a possible outcome of this meeting is a decision to terminate the Job Holder's employment or issue a further warning, then this will be a Formal Meeting. See 'Review Meetings That May Result in Dismissal' below.
- 11.7. If prior to the Review Meeting it is clear that the Job Holder's performance has improved as required and no further warning is appropriate, then the meeting will be an Informal Meeting at which the Job Holder will be notified that these Procedures will no longer apply.

12. Review Meetings That May Result In Dismissal

- 12.1. At the end of both the Normal Review Procedure and the Fast Track Procedure a Formal Meeting may be required to decide matters that include whether or not to terminate the Job Holder's employment.
- 12.2. Wherever it is reasonably feasible the manager who is appointed by the Company to make this decision will not include any person who has been directly involved in the Review Meetings previously. This manager is referred to below as 'the Capability Officer'.
- 12.3. This Review Meeting will take place before any final decision is reached regarding: (i) whether or not the Job Holder's performance has been unsatisfactory, (ii) whether or not a decision to terminate employment or issue a warning is appropriate.
- 12.4. In addition to the steps outlined above the letter inviting the Job Holder to the Review Meeting will where appropriate also include:
 - The date, time and place of the meeting
 - Details of the person/s who will conduct the meeting
 - Copies of all documents that will be referred to
 - A reminder of the Job Holder's right to be accompanied, and a request for confirmation of who the Job Holder's representative will be
 - Reference to the Job Holder's right to produce any evidence they feel is necessary, present written submissions, and notice that all information to be considered must be supplied at least three working days prior to the meeting
 - A copy of this Policy and Procedure

- 12.5. The meeting will only be postponed in exceptional circumstances, for example where it is reasonable to allow further time for the Job Holder to prepare, or where the Job Holder or their Companion is unable to attend the meeting.
- 12.6. If the Job Holder's Companion is unable to attend, the Job Holder must suggest another date that is reasonable and is not more than five working days after the date originally proposed by the Company.
- 12.7. Where the Job Holder continues to be unavailable to attend a Review Meeting, or is unwilling or fails to attend without good reason, the Company will need to consider all the facts and come to a reasonable decision on how to proceed. In these circumstances it may be necessary to determine the case in the Job Holder's absence and on the evidence that is available, in which case the Job Holder will be warned of this and given a final opportunity to either attend the Review Meeting or to provide any written submissions or additional evidence he/she wishes to be considered.
- 12.8. A written record of the Review Meeting will be kept and made available if the Job Holder requests it.
- 12.9. When the Job Holder has been given a full opportunity to present any evidence they consider relevant and to make any submissions the Capability Officer will normally adjourn the meeting and then decide whether or not it is necessary to terminate the Job Holder's employment.
- 12.10. The Capability Officer must decide whether the facts known are sufficient to form an honest and reasonable belief that:
 - The Job Holder's performance has fallen short of the standard required; and
 - The Job Holder has been provided with a reasonable amount of support and guidance to assist them to perform satisfactorily; and
 - The Job Holder has received sufficient warning that if their performance does not improve it will be necessary to consider terminating their employment; and
 - There is nothing more that can reasonably be done in the circumstances to give the Job Holder a further chance to improve their performance; and
 - No further investigation is required; and
 - It is fair and reasonable in all the material circumstances to dismiss the Job Holder.
- 12.11. If the Capability Officer considers that the Job Holder's performance has been satisfactory and no further Review Period is necessary it will confirm this in writing to the Job Holder together with notice that this Procedure no longer applies.
- 12.12. If the Capability Officer considers that the Job Holder's performance has been unsatisfactory but that the requirements of paragraph 12.10 are not satisfied, then it shall refer the case for a further Review Period.
- 12.13. If the Capability Officer is satisfied that the requirements of paragraph 12.10 are satisfied then notice of termination of employment (or payment in lieu thereof) in compliance with the Job Holder's contract of employment may be given.

13. Grievances

- 13.1. A Job Holder may not raise a grievance under the Grievance Policy in relation to these Procedures but must use the Formal Meeting and Appeals Procedure to address any concerns or complaints they may have.
- 13.2. Only if a Job Holder has a grievance that cannot or will not be addressed at a Formal Meeting or in the Appeals Procedure, may they use the Grievance Policy to pursue this.
- 13.3. Unless it would be manifestly unfair to do so, a Review Procedure that is underway at the time a grievance is submitted, will continue alongside any Grievance Procedure that is necessary and will not be put into a state of abeyance pending the outcome of the grievance.

14. Appeal Procedure

- 14.1. A Job Holder may appeal against a decision to issue a warning or to terminate their employment.
- 14.2. A Review Procedure that is underway will continue notwithstanding that the Job Holder has appealed against a decision to issue a warning and undertake a further Review Period.
- 14.3. A Job Holder who appeals against a decision to terminate their employment must be willing to be reinstated or re-engaged if the appeal is successful.
- 14.4. The Job Holder must inform the Company in writing of their wish to appeal within five working days of being notified of the decision taken following the Formal Meeting.
- 14.5. The Job Holder must: set out the specific grounds for their appeal; provide any new evidence that has come to light; explain the desired outcome; and provide copies of any appropriate supporting documentation within a reasonable timeframe prior to the date of an Appeal Meeting.
- 14.6. The person/s who have been appointed by the Company to decide the outcome of an appeal will not include any person who has been involved in the Review Meetings previously. The person/s appointed for this purpose are referred to below as 'the Appeal Officer'.
- 14.7. The Job Holder will be invited to an Appeal Meeting within a reasonable period of time and will normally be given at least five working days written notice of this. This is a Formal Meeting.
- 14.8. The Job Holder should confirm their availability to attend at least two working days prior to the Appeal Meeting.
- 14.9. During the Appeal Meeting the Job Holder will have an opportunity to explain the grounds of their appeal and present any relevant evidence.
- 14.10. The Appeal Officer will normally confine himself / herself to considering the specific grounds for the appeal and any evidence in support or opposition of those grounds. The Appeal Officer will not normally reconsider the whole of the case but this is not

precluded if the Appeal Officer feels it is necessary. The matters covered in paragraph 12.10 above will be considered in any event.

- 14.11. No decision will be made during the Appeal Meeting. The Appeal Officer will take sufficient time to consider the evidence presented and where necessary instruct further investigations to be carried out before a decision is made.
- 14.12. The Appeal Officer may decide:
 - To uphold the appeal and write in terms consistent with paragraph 12.12 above and in the case of a dismissal reinstate or re-engage the Job Holder (in which case any lost pay that relates to the period after a decision to dismiss will be paid to the Job Holder as soon as possible)
 - To uphold the appeal and write in terms consistent with paragraph 12.13 above so as to engage a further Review Period, and in the case of dismissal reinstate or re-engage the Job Holder (in which case any lost pay that relates to the period after a decision to dismiss will be paid to the Job Holder as soon as possible)
 - If the Appeal Officer is satisfied that the grounds of appeal are not made out it will dismiss the appeal and uphold the decision to dismiss
- 14.13. The Appeal Officer's decision, together with the reasons for it and its findings and conclusions in response to each ground of appeal, shall be confirmed in writing to the Job Holder within a reasonable period of time.
- 14.14. There is no further right of appeal against the decision of the Appeal Officer.