
Scope

This policy applies to all employees at the Care Group and forms part of the contract of employment that applies to directly employed staff.

Definition

This policy sets out the procedure to be followed where an employee fails to reach or maintain the required standards of job performance through a lack of knowledge, skill or ability.

The Disciplinary Policy will be used where the failure to perform to the standards required is a matter of misconduct.

The Care Group reserves the right to implement the capability procedure at any of the stages set out below taking into account the relevant circumstances including the level of poor performance, the nature of the role and the performance issues in question. In particular in cases of gross negligence or in any case involving an employee who has not yet completed their probationary period, dismissal without following the stages of the capability procedure may be appropriate.

Principles

Employees are expected to be capable of carrying out the work they are engaged to do at the required standard.

Reasonable efforts should be made to informally address issues of under-performance without instigating the Formal Procedure.

Managers are required to provide an employee with a reasonable opportunity to improve and support to achieve the required standard of performance. The period of time to improve and level of support must be balanced against the needs of the service.

At any formal meeting employees may be accompanied by an accredited trade union representative or work colleague and the employee will be advised of this prior to the meeting. The companion will be allowed to address the meeting in order to help present the employee's case.

Employees must take all reasonable steps to attend formal capability meetings. Failure to attend a meeting without good reason may be treated as misconduct and decisions may be made in the employee's absence.

Employees have the right to state their cases at formal capability meetings before decisions are reached.

The employee will not be eligible for any pay increase due during the period of any Improvement Plan. This will be reviewed and the pay increase reinstated at the point when the employee has consistently met the required performance standard.

Informal Action

In the normal course of employment, managers will discuss with an employee their performance, providing regular feedback.

Managers are responsible for agreeing appropriate standards of performance, for explaining these standards to employees and for the provision of training, support and guidance, where appropriate, so that the employee has the opportunity to perform well.

The manager and the employee should aim to discuss any under-performance issues at or around the time they arise.

Prior to the instigation of the formal procedure the manager will ensure that an employee has been advised of their under-performance and will provide support and assistance so that the employee has the opportunity to achieve the required standard. Support may include the provision of training, development, advice, guidance or other support.

As part of this process the manager will advise the employee that failure to reach the required performance standard may result in the formal procedure being instigated. This will be confirmed in writing.

Where informal action does not achieve satisfactory results or if informal action is not appropriate, the Formal Procedure will be implemented.

Formal Procedure

Step 1: First Capability Meeting

The manager will write to the employee notifying them of the concerns over their performance and the basis of those concerns, and will invite them to a meeting to discuss the matter.

At the meeting the employee's manager will explain the way in which the required standard has not been met, using examples to support concerns. Through discussion with the individual, the manager will seek to identify the reasons for the unsatisfactory performance.

Improvement Note

Following the meeting, if the manager decides that it is appropriate to do so, the employee will be issued with a written Improvement Note setting out the areas in which the employee has not met the required performance standards. A formal Improvement Plan will be

initiated setting out the improvement that is required, the standard to be reached and time within which it must be achieved.

The Improvement Note will state that failure to reach the required performance standard may result in further formal action being taken that could lead to dismissal.

The Improvement Note will be disregarded for capability purposes after 12 months or such other period as specified at the time it is issued.

Improvement Plan

An Improvement Plan aims to enable the individual to achieve the required standard of performance.

The plan will include clear, measurable, realistic objectives and timelines. Performance progress will be reviewed periodically. Specific actions will be detailed and may include training and development activities, advice, guidance, or support activities.

When issuing an Improvement Plan the manager will ensure the length of the plan is reasonable by taking into account all of the relevant circumstances including:

- The level of poor performance
- The impact of the poor performance
- The performance issues in question and improvement required
- The type of job role

The Improvement Plan would usually be for six weeks, though may be for up to twelve weeks depending on the circumstances.

Interim Review

During the Improvement Plan, the employee's manager will usually hold at least two interim review meetings to assess the individual's performance against the Improvement Plan.

Where progress towards the objectives is satisfactory, it will be recognised and continued improvement encouraged. If the individual is not making sufficient progress towards the objectives the manager will discuss with the employee the further improvement that is required and any support that is needed.

Step 2: Second Capability Meeting

At the end of the Improvement Plan period, a meeting will be held to review the employee's performance. The manager will write to the employee in advance explaining the purpose of that meeting.

The possible outcomes of the meeting may include but are not limited to:

No further action: If the manager determines that the objectives have been met and the individual is performing at the required standard no further action will be taken. The employee will be informed in writing that they have achieved the required level and that they are expected to maintain that standard of performance.

Extension of the Improvement Plan: Where significant progress has been made in achieving the required standard but concerns remain, a manager may decide it appropriate to extend the Improvement Plan. The length of the extension will take into account the length of the previous Improvement Plan and the level of under-performance and would usually be for six weeks. At the end of the extended Improvement Plan Step 2 will be followed again.

Final written warning: If the objectives have not been met and the manager concludes that the under-performance may still be rectified by further support a final written warning and Improvement Plan may be issued to the employee. The warning will stipulate that failure to reach the required performance standard may result in dismissal or redeployment to another position. A final written warning will be disregarded for capability purposes after 12 months or such other period as specified at the time it is issued. In exceptional circumstances, depending on the performance issues, a warning may remain in force for more than 12 months.

Step 3: Third Capability Meeting

At the end of a further Improvement Plan period, a meeting will be held to review the employee's performance. The manager will write to the employee in advance explaining the purpose of that meeting and that one of the possible outcomes may be dismissal or redeployment to another position.

The employee has the right to be accompanied at the meeting by an accredited trade union representative or work place colleague.

It is important that formal capability matters are resolved in a timely manner and also that the employee has sufficient time to contact and brief their companion if they have one, before the meeting. To allow this, at least one week's notice of the Third Capability Meeting would usually be given.

If the companion will not be available at the meeting time arranged the employee can request that it is rearranged to an alternative time and date. In this case the alternative date should not usually be more than one week after the one originally arranged.

Relevant documents and information to be discussed in the meeting will be forwarded to the employee at the same time.

The employee may submit evidence to support their case and should provide this ahead of the meeting, usually at least one week ahead.

The formal Third Capability Meeting is chaired by a manager with appropriate level of seniority and experience for the concerns being considered and the possible outcomes. The chair must have dismissing authority. At least one other appropriate person will support the chair. This may be a special adviser with appropriate clinical knowledge if required. Summary notes will be taken at the meeting either by a member of the panel or a note taker as appropriate. A copy of the summary notes will be sent to the employee and their representative [if appropriate] for comment. Provided comments are received within a

reasonable timeframe, as defined by the hearing manager, they will be held with the original notes from the meeting.

The employee has the right to state their case at the meeting before any decisions are reached.

Following the meeting, the hearing manager will review the evidence and decide the outcome.

The possible outcomes of the meeting may include but are not limited to:

- Redeployment to another position - the manager may consider that this is appropriate as an alternative to dismissal. This may include demotion.
- Dismissal with notice
- A further Improvement Plan period
- No further action - this will follow the principles set out at Step 2 above.

Following the meeting the chair will inform the employee of their decision in writing, outlining the basis of the decision reached and any action that is involved. This will usually be sent to the employee within two weeks of the meeting.

Before a capability penalty is imposed on an accredited representative of a trade union recognised by the Care Group, the capability proceedings will be discussed with a full time officer of the union concerned.

Step 4: The right to Appeal

The employee has the right to appeal against the outcome of the capability process. All appeals will be conducted in accordance with the Care Group Appeals Policy.

Referral to other bodies

Depending on the circumstances and the nature of the allegations the case may be referred to the relevant professional body.

The employee will be informed at the time if this is the case.

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