

MANAGERS GUIDE

Managing Capability Issues

The purpose of these guidance notes is to aide a manager through the Capability process (also known as a Formal Capability Review) and it accompanies the Capability Policy. This document must not be used in isolation as it is not a policy. The Capability Procedure is a method used to address unsatisfactory performance with employees and should be used as a means of improving standards.

The Capability Procedure complies with the Statutory Dismissal and Disciplinary Procedures set out in the Employment Act 2002 therefore there is a statutory obligation to follow a 3 step process when handling Capability, refer to the formal process flowchart. These are:

Step 1 – Invite to a Formal Review Meeting

Step 2 – Conduct a Formal Review Meeting

Step 3 – Right to Appeal

Note: Any dismissal undertaken will automatically be deemed as unfair should this process not be followed.

However, before we invoke this 3 step procedure we need to give the underperforming colleague the opportunity to improve. This is managed at the Informal stage.

Company's Commitment to Capability

- To ensure that the policy is applied consistently across the Company
- To ensure that all line managers are fully trained in capability management
- To ensure that all employees are provided with the necessary training and guidance to enable them to achieve the required performance level
- To explore all day to day management interventions and assistance prior to starting a formal process
- To have regular discussions with all employees regarding their expected level of performance and their performance in line with these
- To ensure the Capability Policy and Procedure is in line with current legislation.

Individual Commitment

- To fully understand the requirements of their role and performance standards
- To seek assistance if they do not understand or are unable to perform a requirement
- To make every effort to ensure their capability meets required levels
- To be aware of the Capability Policy and Procedure and possible consequences of failing to meet the standards required.
- To receive any feedback in a positive manner and view it as an aid to support improvement
- To fully understand the requirements of their role and performance standards

Documents

Managing Capability Flowchart (Informal stage)

Improvement Action Plan (IAP)

Improvement Memo

Managing Capability Flowchart (Formal stages)

How to conduct a formal meeting

Why manage poor performance?

There may be occasions when an employee's work performance is below the standards expected by the company. It is the role and responsibility of the manager to ensure that employee capability to do the role and general performance is acceptable and consistent. Should it fall below the standard expected then the performance has to be uplifted and supported.

Identifying poor performance

Poor performance cannot be ignored and is one area where formal capability action may be considered. It is however important to consider whether poor performance is a conduct or capability issue, and whether disciplinary action is more appropriate.

'CONDUCT' Issues – WON'T DO

This is relating to breaches of policy and unacceptable behaviour, "won't do". It focuses on individuals having the 'will' to do something. The way in which a task is done rather than the skill to do the task. It is 'How' they do the job. Issues of this nature are managed through the Disciplinary policy.

'CAPABILITY' Issues – CAN'T DO

This is related to the individual's performance, "can't do". It is about the ability to do the job they are employed to do. The main thing to remember is that you have a responsibility to be fair, objective, honest and factual. Poor performance **MUST** be dealt with as it can cause major problems with the rest of the team and their performance.

Preventing poor performance?

- Recruit or promote the right person to the right job
- Explain standards to employees
- Train, coach and develop employees so they have the skills and knowledge to do their jobs
- Carry out honest and objective appraisals & reviews
- Manage staff effectively through motivating, communicating and praising them.
- Manage expectations honestly and openly.

How do deal with poor performance fairly

- Discuss with the employee to find out the cause – lack of training, problems at home, bullying.
- Clarify and agree standards
- Offer training and support
- Monitor progress and review at a later date
- If no progress – consider whether capability or conduct, and whether employee may be dismissed or transferred to alternative duties.

Do

- Ensure that you are clear about what improvement is expected of the employee
- Ensure that any training, retraining or support is provided to the employee and they have enough time to improve as a result of this
- Diarise when the period of informal review is over

Don't

- Confuse misconduct with capability. If you are unsure contact the HR team
- Set unrealistic timeframes for improvement
- Set unrealistic targets that the employee would not be able to achieve or set expectations that another person in that role would not be required to do.

The Informal Stage

When an employee is underperforming it can have a detrimental impact not only on the employee but on the rest of their team and the wider company. It is therefore important to establish whether this inability to perform at the required level is a matter of “can't do” or “won't do”. If you believe that the underperformance is because the employee won't take the necessary steps to improve their performance, it would be more appropriate to take disciplinary action, rather than invoke the Capability Procedure.

When it becomes clear that the decline in performance has become serious, it is important to take action, as more often than not the problem will not just go away. It is essential that there is an informal stage when assessing an employee's poor performance as this will give them the opportunity to improve to the required standard and it also gives the manager time to ascertain the reasons for the poor performance. Use the informal capability process flowchart.

The informal stage involves arranging a meeting with the colleague and detailing the standards expected of them and how they are currently falling short. The structure of this meeting should be as follows:

1. Identify the cause(s) of the poor performance and to determine what if any remedial treatment (e.g. training, retraining, support, etc.) can be given
2. Clearly explain the shortfall between the employee's performance and the required standard, giving examples where appropriate
3. Obtain the employee's commitment to reaching that standard
4. Set a reasonable period for the employee to reach the standard and agree on a monitoring system during that period
5. Tell the employee what will happen if that standard is not met.

The outcome of this meeting should be recorded in writing on an Improvement Action Plan form.

It may be necessary to conduct a maximum of two further performance review meetings within the set time period. This is to ensure that the colleague has enough support and guidance within the review period. These should be documented and copies given to the colleague.

At the end of the review period, if the performance has not improved and the objectives achieved, schedule a Stage One Formal Capability Review Meeting with the employee.

Using informal measures effectively

This process aims to address the gap between the employee's current performance and the expected standards of performance by utilising an Improvement Action Plan (IAP).

Improvement Action Planning is a powerful tool for managing an employee's performance; it ensures:

- Employees are aware of poor work performance
- Effective communication between a manager and an employee
- Required standards of performance are agreed, achieved and maintained without delay
- The intention of the informal stage IAP is to give employees an opportunity to improve their performance.
- The emphasis at this stage should be on nipping problems in the bud and helping people to improve.
- This approach will often alleviate problems, because it will raise awareness that high standards are important.
- Managers must be aware when it becomes necessary to take formal action, because informal action has not been effective.
- When an employee's work performance is an issue, the informal stage should concentrate upon performance support and arranging the appropriate remedial measures to help the individual in reaching the required standard and recorded on an IAP.

Expected standards

A review meeting is the best forum for a manager to highlight and discuss, with an employee, areas of concern about the employee's performance away from normal day to day activities.

Once an issue of poor performance has been identified a review meeting should be held as soon as possible to minimise the risk of the issue continuing or escalating.

The meeting should be a two-way discussion which enables the manager to highlight the areas of concern and the employee to explain any reasons there might be for their poor performance.

There should be a positive outcome from the discussion with an IAP agreed that will raise and maintain the employee's performance to the required standard within an agreed time period.

A copy of the agreed IAP should be given to the employee and the manager should retain a copy to be filed on the employee's personnel file, held by HR.

Any agreed IAP must be reviewed with the employee at a follow up **Review Meeting** to ascertain whether there has been an improvement and to evaluate what, if any, further action is required.

No further action, other than providing assistance if requested and ongoing coaching should be taken before the Review Meeting as the employee must be given:

- The appropriate time to achieve the improvements required
- The opportunity to discuss any issues at the Review Meeting

A successful IAP process is not confined to the meetings with the employee. It is also important that the manager monitors the employee's performance between the first meeting and the review. This monitoring should include:

- Praising improvements and tasks well done
- Coaching and supporting the employee when required

THE FORMAL PROCESS

Stage One - First Formal Capability Review

At the end of the Informal Stage it is essential to have a meeting to discuss the review period with the employee. The written invitation to a Formal Performance Meeting represents Step 1 in the Statutory Disciplinary Procedure, you must contact HR and they will prepare the invite letter for you. The formal stage should only be invoked once the informal process as outlined has been followed.

An employee **MUST** be given at least 24 hours' notice of the meeting to allow sufficient time to prepare, if possible provide more notice. It is essential to include all relevant documentation with the invite letter. This should include information detailing the IAP showing where they have or have not achieved the targets set at the informal meetings.

The employee is entitled to have a work colleague or Trade Union representative with them at the formal review meeting

Do

- Postpone the meeting should the employee not have received all the relevant documentation in advance of the meeting and rearrange for another time (suggested within 48 hours)
- Postpone for up to 5 days if the representative is unable to attend the meeting
- Include all the relevant documentation prior to the formal capability meeting.

Representation / Witness

It is essential that the employee is offered the opportunity to have a witness/representative present at their formal capability meeting. They may choose to either accept or decline this opportunity.

A witness/representative should be either a work colleague or trade union official. A trade union official must provide written documentation from the trade union certifying their competence to act as companion.

A witness/representative may address the meeting in order to do any or all of the following:

- put forward the employee's case
- sum up that case
- respond on the worker's behalf to any views expressed at the meeting
- confer with the colleague during the meeting.

A witness/representative may not

- answer questions on behalf of the employee
- address the meeting if the employee indicates that he/she does not wish for their companion to do so
- try and prevent the Chair of the meeting from explaining his/her case or prevent any other person at the meeting from making his/her contribution to it.

Taking Notes during a Formal Capability Review Meeting

A note taker should be present at every formal performance review meeting and it is useful to have someone taking notes at the informal stage. Notes provide a permanent record of exactly what has been said and decided, as well as evidence of the events of the meeting for later reference. It is important that the notes are as accurate and comprehensive as can be, using verbatim quotes wherever possible. A copy of the notes should be given to the employee at the earliest opportunity in order that they can clarify anything they feel is inaccurate.

Before the proceedings start, the manager should advise everyone that a record of the meeting is being made and that it would be helpful to speak clearly and slowly. The notes should also record the date of the meeting, the start and finish time and everyone present at the meeting, their position/role and when they entered and left the room.

A copy of the notes should be enclosed with the outcome letter.

Do

- Remember to bring an adequate supply of lined paper, a number of pens and an accurate watch
- Ask for the name and position of all individuals attending the meeting
- Make the note clear so that they can be read following the meeting

Don't

- Include anything other than the events occurring and statements made, unless both parties agree that this should be the case for a particular reason which should also be stated in the record
- Display any bias when taking notes which could display the employee in either a good or bad light or in some ways justifies actions or sanctions. Notes should always be an impartial, plain statement of the facts of the meeting.

Conducting the Stage 1 Formal Capability Meeting

The Formal Capability Review Meeting represents Step 2 of the Statutory Disciplinary Procedure. Utilise the 'How to Conduct a Formal Meeting' Document

1. Open the meeting by introducing everyone present, including the note taker.
2. If the employee does not have representation, confirm they understood their right to be accompanied and confirm if they wish to continue.
3. Explain the reasons for the meeting and possible outcomes e.g. that one possible outcome of the meeting is that they will receive a Formal Warning in line with the policy.
4. Go through the areas where they were underperforming and where they have improved or failed to improve on.
5. Invite the employee to go through each of the key areas, give explanations and offer any possible mitigating circumstances.
6. After the facts have been discussed, summarise your view of what has come out of the meeting and invite the employee to give their opinion.
7. If you believe you have all the evidence available to make a decision, inform the employee that you will be adjourning the meeting to consider what has been said. DO NOT state how long you think this will take.
8. During the adjournment, you will need to consider if you believe that the employee has made a significant improvement or if they have achieved the required standard expected of them.
9. You may decide during the adjournment that no action is necessary. This may be due to the colleague's performance improving to the required standard. This should be explained to the employee and they should be told that no further action will be taken but that records of the meeting will be held on file for 6 or 12 months, depending on the stage issued. It is also essential to confirm this in writing to the employee and detail that if the same or similar issues arise again in the future, the process will begin again at the stage you are at.
10. After reconvening the meeting, summarise the key facts and issues and inform the employee of the outcome.
11. If you believe that the employee's performance has not improved to the standard expected of them, then explain this to them and issue them with a Stage One Formal Warning, explain that this will be held on their file for a period of 6 months.
12. You should also set a date for the next formal review meeting, this should not be less than 4 week (20 work days), so as to provide reasonable time for improvement and explain the consequences should they fail to improve.
13. It is essential that you inform them of their right to appeal and the appeal procedure.
14. After the colleague has left, ensure you have a full complement of all the documentation referred to in the meeting.
15. The outcome of the meeting should be confirmed to the employee in writing as soon as is reasonable practicable and a copy of the minutes should be included with the letter. Contact HR who will prepare an outcome letter for you.

Do

- Remain polite, formal and aware of the employee's right to a fair hearing throughout

Don't

- Allow the meeting to get out of hand. Should emotions get out of hand, call an adjournment and resume the meeting after the break
- Be afraid to adjourn the meeting pending further information or clarification should you need to
- Prejudge or rush the meeting, remember everyone has the right to a fair hearing

Stage Two - Second Formal Review

Throughout the review period following the First Formal Warning it is essential to monitor the colleague's performance. The Second Formal Review Meeting should be conducted in the same manner as you would the First Formal Review Meeting. Utilise the 'How to Conduct a Formal Meeting' Document.

It is essential regardless of how well or badly the employee does throughout this period that you formally invite them to a meeting to review their performance. Contact HR for the letter to be prepared for you to issue.

At the end of the review period you will be left with a choice of 3 different options.

- Option 1 No further Action
- Option 2 Stage Two Formal Warning
- Option 3 Dismissal

Option 1 – No Further Action

The first option is applicable if the employee has made the necessary improvements and there is no need to continue with the Capability Process.

It is important to go through the improvements with the employee and then follow up the meeting in writing, explaining that should their improvement start to decline in the next 12 months then the process will begin again at Stage Two. A copy of this letter should be held on their personnel file.

Option 2 – Stage 2 Formal Warning

This relates to when an employee's performance has improved but is still not at the level expected of them. Should this be the case then they should be issued with a Stage Two Capability Warning. This warning will be held on their file for a period of 12 months.

At this meeting it is essential to set another period for review which should be no shorter than 4 week (20 work days), in order to allow reasonable time for improvement. Again explain the areas where they are still falling short of expectations. The employee should be informed that failure to improve after the next review period could lead to their dismissal.

It is essential that they are also informed of their right to appeal against the sanction and provided with details of the appeal procedure. This should include the timeframe in which they have to appeal the decision, as well as the fact that they need to appeal the decision in writing, details of which should also be on their sanction letter.

Option 3 - Dismissal

The third option relates to when an employee's performance has not improved at all and you do not believe that they are ever likely to reach the standard expected within a reasonable time frame. It is important when giving this sanction that you explain your reasoning to the employee.

- You should explain that their dismissal will be effective immediately and they will not be required to work their notice, but will receive pay in lieu of notice instead.

OR

- You should explain that they will be required to work their notice which will mean their last working day will be XX(state the date the notice will end).

If you believe this is the most appropriate action, you should consult HR prior to giving the sanction.

Stage Three - Third Formal Capability Review

As with Stages One and Two, it is essential to monitor the performance of the employee throughout the review period. Utilise the 'How to Conduct a Formal Meeting' Document. At the end of the review period you will be left with a choice of 2 different options. Again, it is essential regardless of how well or badly the employee does throughout this period that you formally invite them to a meeting to review their performance.

- Option 1 No further Action
- Option 2 Dismissal

There are only two possible outcomes at the end of this stage

Option 1 – No Further Action

The first option is applicable if the employee has made the necessary improvements and therefore there is no need to continue with the Capability Process.

It is important to go through the improvements with the employee and then follow up the meeting in writing, explaining that should their improvement start to decline in the next 12 months then the process will begin again at Stage Three. A copy of this letter should be held on their personnel file in HR.

Option 2 – Dismissal

If the employee has not performed to the required level by the end of the final review period, then the most appropriate sanction would be dismissal. It is important when giving this sanction that you explain your reasoning to the employee.

- You should explain that their dismissal will be effective immediately and they will not be required to work their notice, but will receive pay in lieu of notice instead.

OR

- You should explain that they will be required to work their notice which will mean their last working day will be XX(state the date the notice will end).

If you believe this is the most appropriate action, you should consult HR prior to giving the sanction.

Appeals Process

Appeals constitute Step 3 as required by the Statutory Disciplinary Procedure. **Failure to grant the right of appeal will therefore lead to a dismissal being automatically unfair if challenged. It has to be explained to the employee at every stage when a capability warning is issued.**

The Appeal procedure

An appeal procedure should:

- Be heard by a different manager to the manager who conducted the formal review meeting.
- Clarify the action which may be taken by those hearing the Appeal.
- Provide that the employee, or their representative if the employee so wishes, has an opportunity to comment on any new evidence arising during the Appeal before any decision is taken (even evidence coming to light after an appeal meeting).
- Be conducted as a meeting to consider the outcome from the original meeting.

How should an Appeal meeting be conducted?

Prior to the Appeal, inform the employee of the arrangements for the Appeal Meeting in writing detailing his/her rights under the Appeal procedure. Following a review of the existing documentation from the formal performance review meeting, it may be necessary to carry out further investigation. All new evidence must be provided to the colleague prior to the appeal meeting.

The Appeal Meeting

1. Open the meeting by introducing everyone present, including the note taker.
2. If the employee does not have representation, confirm they understood their right to be accompanied and confirm if they wish to continue.
3. Explain the purpose of the meeting, how it will be conducted and what option the Appeal manager has.
4. Clarify why the employee is appealing against the capability sanction, this is the ground for the appeal.
5. Pay particular attention to any new evidence that has been introduced and ensure the employee has the opportunity to comment on it.
6. Once all the relevant issues have been thoroughly explored, summarise the facts and call an adjournment to consider what decision to come to.
7. Inform the employee of the results of the Appeal and the reasons for the decision and confirm it in writing. Make it clear, if it is the case, that the appeal decision is final.

Resignation during the Capability Process

There may be occasions when an employee will decide to resign during the formal capability review stages. Any resignation should be carefully considered and if accepted confirm that no conclusions have been reached and no decisions made and offer them the opportunity to withdraw their resignation. It is also important to explain that should they decide to withdraw their resignation then the capability process will continue as before.

If an employee expresses their intention to resign, ask him/her to confirm their decision in writing. They may request to resign with immediate effect, which should be considered on an individual basis and if the business needs allow.

A problem solving approach

- Recognise that the problem exists
- Find out the cause of the problem
- Look for solutions to the problem
- Devise an action plan to resolve the problem
- Take time to reflect on the effectiveness of your solution for future reference.

Conclusion

Should performance fall below the standard expected then it needs to be uplifted and supported, not ignored.

- Deal with the cause of the underperformance rather than the effect.
- Tell the individual their performance has to improve.
- Agree specific performance targets that they need to reach and maintain. Make sure that the targets are achievable. (S.M.A.R.T)
- Let them know how and when you will be checking these targets.

Follow up

- Find out what additional training or support they need.
- Put a support system in place. You may need to coach them yourself, or ask another member of the team to help out.
- Check that the targets have been met
- Reassure the individual by confirming any additional steps that may be required