

## **Capability Procedure – May 2012**

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### **1.0 Introduction**

- 1.1 The capability procedure is designed to support employees to achieve and maintain the performance standards required for their job.

### **2.0 Capability and Ill Health**

- 2.1 An individual's capability to carry out their role to the required standard may be affected by their health and level of absence from work.
- 2.2 Managers must bear in mind the provisions of the Equality Act 2010 in particular the obligation to make reasonable adjustments when supporting employees with a disability.
- 2.3 Throughout the capability procedure, the work of the employee will be considered in the light of any adjustments that have been agreed by their manager.

#### Scope of Application

- 2.4 The capability procedure applies to all staff who have successfully completed their probationary period.

### **3.0 Informal Stage**

- 3.1 Many issues of capability can and should be resolved informally without recourse to the formal capability procedure.
- 3.2 As soon as either a manager identifies issue(s) of concern, they should arrange an informal meeting to discuss their concerns. At the meeting both parties should have the opportunity to discuss the concern, to make comments and suggest solutions using specific examples to evidence their concerns.
- 3.3 The manager will seek to identify the reasons for the problems through a discussion with the employee. If the employee has a disability, the line manager must give full consideration to their duty to make reasonable adjustments in accordance with the Equality Act 2010.
- 3.4 The manager will discuss and agree with the employee any additional training, resources or support that will help them achieve sustainable performance improvements.

- 3.5 The manager will produce a written record of the meeting, and give the employee a copy of the record.
- 3.6 A review period will be set not normally exceeding three months, although in some circumstances this may be longer if deemed necessary. The review period must be reasonable, take into account the nature of the performance issue and be decided in consultation with the employee.
- 3.7 At the end of the informal review period, another meeting will be arranged to review the employee's progress. If the employee's performance has improved this should be recognised by the manager and the employee advised that no further action will be required.
- 3.8 If, after the informal performance review period an employee's performance is not meeting the standards required for the job the manager will start the formal capability procedure.

#### **4.0 Notification, Representation and Recording of Formal Meetings**

- 4.1 All employees will receive ten working days written notification of any formal meeting convened under the capability procedure. The notification will include:
- The date, time and venue of the meeting.
  - Details of all attendees at the meeting, including any witnesses.
  - Copies of any documentation that will be considered at the meeting.
  - A copy of the capability procedure and guidance document.
  - The potential outcome of the meeting, i.e., issue of a first, final written warning or dismissal.
- 4.2 The employee has the right to be accompanied by a work colleague or trade union official. Where an individual's representative is unavailable to attend the original hearing date one postponement will be allowed for an alternative date within five working days of the original date.
- 4.3 The manager will arrange for notes to be taken at all formal meetings and a copy will be provided to the employee within five working days of the meeting.
- 4.4 The Human Resources Manager will be present at all formal capability meetings.

#### **5.0 First Formal Stage**

- 5.1 If the unsatisfactory performance continues or the initial level of underperformance is significantly serious, the line manager should convene a first formal performance review with the employee.
- 5.2 The manager will convene the meeting in accordance with section 4.0 of the capability procedure.

- 5.3 At the meeting the manager will:
- Remind the employee of the previous discussion and explain how the employee is not meeting the standards required for the job, using specific examples to evidence their concerns.
  - Ask the employee if there are any factors that may be contributing to their level of job performance and offer the opportunity for the employee to give his or her response.
  - Consider whether there are circumstances beyond the individual's control that have caused or contributed to, reducing the effectiveness of his or her performance.
  - Discuss and agree with the employee any additional training or support that may help them achieve sustainable performance improvements.
- 5.4 Following the meeting, if the manager decides that it is appropriate to do so, s/he will issue the employee with a first formal written warning, an improvement action plan and the notes of the meeting. These documents should normally be issued within five working days of the meeting.
- 5.5 The first formal written warning will advise the employee:
- That failure to reach the performance standards required may result in the issue of a second formal stage warning.
  - Of their right to appeal.
  - The warning will be live for a 12-month period from the date of the warning.
- 5.6 The improvement action plan will:
- Outline specific, measurable and realistic work objectives with regular review periods.
  - List any developmental and support activities designed to support the employee to achieve the work standards.
  - Not normally exceed three months but must be reasonable and decided in consultation with the employee

A template for an improvement action plan is attached as Appendix One.

- 5.7 If the employee's performance has improved at the end of the review period this will be acknowledged by the manager and the employee advised in writing that no further action will be instigated. If the employee's performance deteriorates whilst the formal warning is "live" the capability procedure will re-start at section 6.0.

## **6.0 Second Formal Stage**

- 6.1 If the unsatisfactory performance continues the line manager will convene a second formal performance meeting with the employee in accordance with section 4.0 of the capability procedure.
- 6.2 At the meeting the manager will:

- Explain how the employee is not meeting the standards required for the job and use specific examples to evidence the concerns.
  - Ask the employee if there are any factors that may be contributing to their level of job performance.
  - Discuss and agree with the employee any additional training support that will help them achieve sustainable performance improvements.
- 6.3 The line manager may also advise the employee of the possibility of redeployment, if there are suitable roles available.
- 6.4 Following the meeting, if the manager decides that it is appropriate to do so, s/he will issue the employee with a final written warning, an improvement action plan and notes of the meeting. These documents should normally be issued within five working days of the meeting.
- 6.5 The final written warning will advise the employee:
- That failure to reach the performance standards required may result in their dismissal.
  - Of their right to appeal.
  - That the warning will be live for a 12 month period from the date of the notification of the warning.
- 6.6 The improvement action plan will:
- Outline specific, measurable and realistic work objectives with regular review periods.
  - List any developmental and support activities designed to support the employee to achieve the work standards.
  - The plan will not normally exceed three months but it must be a reasonable period decided in consultation with the employee.
- 6.7 If the employee's performance has improved at the end of the improvement action plan review period this will be acknowledged by the manager and the employee advised in writing that no further action will be instigated. If the employee's performance deteriorates, or does not improve to the required standard whilst the formal warning is "live", the capability procedure will move to the third formal stage.

## **7.0 Third Formal Stage**

- 7.1 If the unsatisfactory performance continues, the line manager will contact the Chair of the Staffing Committee and the HR Manager; the Chair of the Staffing Committee will then convene a capability review hearing and will notify the employee.
- 7.2 At the capability hearing the line manager will describe to the panel the work standards expected of the employee and explain how it has fallen short of the standards required; the manager will also describe the measures that have been taken to support the employee to improve their performance

7.3 The employee or his / her representative may offer an explanation for any of the points raised.

7.4 After hearing all the evidence and representations the following options are available to the Panel:

- Extend the improvement action plan review period, which will be monitored by the line manager in liaison with the Chair of the Staffing Committee;
- Redeploy the employee to a post that is better matched to their level of capability;
- Dismiss the employee, with appropriate notice, on grounds of the lack of capability.

7.5 The written decision of the panel will be provided to the employee, any representative and to the manager, within five working days of the meeting and a copy placed on the employee's HR file.

## **8.0 Right to Appeal**

8.1 An employee has the right to appeal against any formal action taken against them under the capability procedure.

8.2 An employee wishing to appeal against a formal warning should do so within five working days of receipt of the written notice of warning, while appeals against dismissal should be made within ten working days of receiving the written notification of dismissal.

8.3 The appeal notice, which must be in writing, must specify the reason(s) for the appeal.

8.4 Full details of the appeals procedure are published within Heythrop's disciplinary procedures.

## **9.0 Annual Increments and Formal Capability**

9.1 If a member of staff has formal capability proceedings against him/her, he/she will not be entitled to receive an annual increment, if one is due; this does not affect any annual cost of living increases applied to the pay structure.

9.2 When it is established that performance is satisfactory, the line-manager will meet with the member of staff to inform him/her that their performance is now satisfactory. The line-manager will then notify the Human Resources Manager.

9.3 The Human Resources Manager will notify an employee that their annual increment has been suspended or reinstated. Reinstatement will be from the date of the meeting at which the member of staff was informed of his/her satisfactory performance. If the line-manager can confirm satisfactory performance from an earlier date, back-dating on the increment will be allowed to that date (up to three months).

**Appendix One  
Improvement Action Plan Framework**

Key Responsibilities	Performance Measure	Performance Rating @ dd.mm.yy	Interim Rating @ dd.mm.yy	Feedback on Performance Review for period ending dd.mm.yy	Evidence/Development Required

Rating	1	2	3	4	5
Definition	No evidence, or requires significant development	Performance requires development	Performance meets required standard.	Performance above standard required	Exceptional level of performance.