

Guidance for managers: Capability - Performance issues

1.0 Initial concerns

Where a manager is concerned about an employee's level of performance it should be discussed with the employee in a timely manner in order to mitigate the risk of performance continuing below expected standards or worsening. The Manager should be mindful that that aim of invoking the [Capability Procedure](#) is to improve the situation and to provide support to the employee.

1.1 Medical Reasons

Managers and HR should discuss whether or not the employee's performance is being affected due to medical reasons, and where appropriate a referral should be made to Occupational Health to provide additional support and guidance.

1.2 Alternative Routes

Either prior to or in conjunction with managing performance, line managers and Human Resources should consider if redeployment is an option or if alterations to contractual status is possible (e.g. reduce or increase hours).

2.0 Managing Capability Issues - Informal stage

Capability issues should normally be managed informally in the first instance (see Appendix 1 for further guidance). Before commencing the informal stage the manager should consider whether there are any mitigating factors such as cultural, disability or other equal opportunity issues which might be a factor in managing a capability issue.

Managers should discuss the options/case with their Human Resources Partner prior to meeting with the individual concerned.

2.1 During the initial informal discussion managers should:

- Provide examples/evidence of concerns;
- Discuss the expected level/improvements in relation to the previous examples;
- Where possible try to seek acknowledgement from the employee that they believe their performance could improve;
- Agree what improvements need to be made, ensuring they are specific to the role the employee is employed to carry out;
- Agree timelines for improvement;
- Discuss what support you can provide, also consider support from colleagues or out-with the Department. Consideration may be given to on-the-job training or a formal training course;
- The member of staff should be set clear written performance targets using an Improvement Plan and a realistic timescale for improvement. These should be jointly

agreed in writing. His/her performance should be regularly reviewed until the performance targets are met.

Where necessary a manager may choose to document and manage the performance by preparing and agreeing a [Performance Improvement Plan \(PIP\)](#). A PIP can be formatted to suit each individual/case.

3.0 Managing Capability Issues – Formal Stage

Where an informal approach has not led to the required improvement within the agreed timescale, managers may initiate the formal Capability Procedure. This enables a staged approach, as follows:

Stage 1 – Line Manager (or nominated person) will carry out a Formal Review Meeting. Prior to the meeting the employee will be provided with a written statement outlining the concerns, and supporting documentation should also be attached to the letter. The employee should be advised, in writing, the outcome of the meeting as soon as practicable. Outcomes may be:

- No further action
- Extend the informal stage
- Progress to a capability hearing

Stage 2 – Hearing 1 - Capability Hearing (Action short of Dismissal – Initial Warning).

Heard by the next level of line management from the person who undertook the Formal Review Meeting. No parties involved in the Hearing should have had any connections with the case or people other than the line manager involved in the Formal Review.

Outcomes may be:

- No further action required
- Initial Warning for 6 months (unless otherwise notified). Reasoning for the warning must be provided in writing also with expected improvements and timescales. Employees can appeal this warning.

Stage 2 – Hearing 1 - Capability Hearing (Action short of Dismissal – Second Warning or Final Warning).

If the matters heard are of serious concern it may be decided that the warning level should go straight to Second Warning or Final Warning (12 months unless otherwise notified). Employees can appeal this warning.

Stage 2 – Hearing 2 - Capability Hearing (Action short of Dismissal – Second Warning).

Heard by the same level of line management from the person who undertook the Initial Warning. No parties involved in the Hearing should have had any connections with the case or people, other than the line manager involved in the Formal Review.

Outcomes may be:

- No further action required
- Second warning issued for 12 months (unless otherwise notified). Reasoning for the warning must be provided in writing also with expected improvements and timescales. Employees can appeal this warning.

Stage 2 – Hearing 2 - Capability Hearing (Action short of Dismissal – Final Warning).

Can be heard by the same level of line management from the person who undertook the Initial Warning. Outcomes may be:

- No further action required
- Written warning issued for 12 months (unless otherwise notified). Reasoning for the warning must be provided in writing also with expected improvements and timescales. Employees can appeal this warning.

4.0 Dismissal Hearing

If there is no satisfactory or sustained improvement after managing the performance via the formal route, a dismissal hearing may be necessary; this will be heard by 2 individuals as noted in the Procedure. Decisions by the Hearing panel are:

- Dismissal Not Upheld
- Dismissal Upheld

5.0 Right of Appeal

Employees have the right to appeal against any formal action taken under the Capability Policy.

6.0 Representation

Employees are entitled to be accompanied by a work colleague or Trade Union representative during all formal meetings which form part of the capability process. An HR Partner will attend all formal meetings in the role of Clerk.

Briefing Note for Managers: How to Conduct an Informal Meeting

1.0 Overview

The below checklist is for guidance purposes only, as it is recognised that the manager will need to determine how best to manage such a meeting based on the individual circumstances of the case.

Please ensure that all discussions during this process are fair, consistent and appropriate.

2.0 Preparation

- Gather all the facts before inviting the employee to discuss specific concerns
- Identify specific examples to draw upon within the meeting e.g. particular areas of performance concerns
- Choose a private location and provide adequate time to discuss/explore the issues
- Notify employee of informal meeting, via face to face communications, or phone/email
- Briefly identify what you wish to discuss at the meeting

3.0 During the meeting

Hold an informal meeting, advising that this an informal meeting aimed at supporting the individual in addressing specific concerns and/or reaching and maintaining necessary standards/expectations

3.1 Explain and Explore Issues

- Constructively explain concerns/issues (i.e. shortfall in performance or development needs), provide factual examples and allow the employee the opportunity to provide any explanations (which should be subsequently followed up and checked, where appropriate)
- Outline the impact these concerns are having on the department/area of work
- Ensure that some positive feedback is provided, where possible
- Together explore any potential causes and any special circumstances. The employee's views/perception of all matters involved should be taken fully into account, and any additional or alternative evidence considered
- Acknowledge any factors beyond the employee's control
- Explain any required standards or expectations which are not being met
- Explore possible reasons/specific problems/underlying issues preventing improvement.
- Explore how issues can be addressed. Consider any suggestions the employee may offer to address the concerns
- Clearly explain relevant expectations and the need for sustained improvement

3.2 Communication

The meeting is about information gathering as well as conveying messages so listening skills are important. Ensure there is a clear understanding of what is being said by all parties by asking open questions and agreeing points and action wherever possible. Produce evidence to support any shortcomings but also acknowledge the individuals achievements.

3.3 Body Language

It is usual for parties to be nervous and defensive, try and keep a relaxed and informal body posture, accompanied by calm, clear and unhurried speech.

3.4 Fairness

Ensure you are fair and objective and apply the same approach to all team members whilst acknowledging that individuals have differing levels of experience, competence and workload. Remember tackling an individual's work issues does not amount to bullying, harassment or victimisation providing it is done in a fair, reasonable and respectful manner.

3.5 Conflict

Be prepared for the individual to be unhappy with the situation and have a strategy for dealing with any emotion. Acknowledge their feelings as well as the facts and be supportive. Avoid confrontation by remaining calm and respectful at all times even in the face of provocation. Never raise your voice or enter into an argument - where emotions are running high an adjournment or a postponement of the meeting is generally the best course of action.

3.6 Agree Outcome

- Together discuss and agree any follow up action/targets/SMART objectives and responsibilities for attaining a sustained improvement and the proposed timescales, including period of monitoring/review, (as appropriate). Generate a Performance Improvement Plan (PIP)/consider any reasonable adjustments (as appropriate). See PIP Template.
- Consider any possible needs for further development (i.e. training) if relevant
- Consider any need for external support (e.g. Occupational Health)
- Explain that insufficient sustained improvement, within the time-scales defined, may lead to more formal action
- Outline formal stage if improvement is not reached/situation not remedied. (Refer to Capability Procedure)
- Advise that the key points of discussion including any relevant expected improvements/review timetable will be noted and sent to the employee for information.
- Seek advice from HR Partner, if necessary
- Check if the individual wishes to add anything or has any questions to ask
- End on an optimistic but realistic note

If the issue is resolved, the employee should be advised of this and the discussion closed with no review required.

Where agreement cannot be reached, you should consult with [Human Resources](#) for advice.

4.0 Record

- Record summary of the discussions, and share with staff member e.g. any agreed actions and timescales for improvement etc., ensuring that the records are factual and constructive. (This may be held in various formats e.g. via a letter, form, email etc.) See the Informal Meeting Record Template (Appendix 2).
- Store records securely, as these may be subsequently required within later procedural stages and shared with all relevant parties, including the employee, if not done so originally

5.0 Review

- Arrange a date for a follow up meeting to review the situation
- If appropriate, depending on the issue, regularly monitor and provide feedback on an on-going basis/not only at any potential subsequent review meeting
- Identify whether there is anything else you can reasonably do to help
- Address any new issues as they arise
- Agree further objectives/set next review meeting, if appropriate
- If process is failing to improve performance consult with your HR Partner to discuss further action under the Formal Capability Procedure

CAPABILITY PROCEDURE FLOWCHART

