

Capability Procedure

This document is relevant to:	
Staff	✓

Purpose

Dorset Mind’s policy is to provide support to any employee who does not meet the standards of the job for which he/she was employed or who is not coping adequately with the pressures of the job, the volume of work or any other aspects of his/her employment

To this end, Dorset Mind will monitor performance to ensure the employee meets the required standards. Where an employee falls below the standards expected the procedure below will be followed.

However, if an employee's poor performance is believed to be the result of deliberate negligence, or where serious errors have been made by him/her to the detriment of Dorset Mind, the Disciplinary Procedure may be used instead.

This policy applies to all employees who have completed their probationary period regardless of length of service. For employees who are still in their probationary period, refer to Section 4.

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Informal Discussions

In the first instance, minor performance issues are usually best dealt with informally.

Employees are encouraged to approach their managers in the first instance, if they feel that they are not coping adequately with any aspect of their job. No employee should be penalised or victimised for disclosing this sort of concern and every reasonable measure will be considered to provide support to the employee.

A manager who notices that an employee is not adequately meeting the standards of his or her job or who is not coping adequately with the pressures of the job, the volume of work or any other aspect of his or her employment, should treat the matter as one of capability under this procedure. The manager should first of all attempt to resolve performance issues by discussing them during supervision. An action plan will be agreed with the employee to improve their performance. The action plan will include actions to improve the employee's performance, such as training, coaching, mentoring or close supervision and performance targets to be met within an agreed timescale. Where this process does not result in the employee reaching the required standard then the manager should deal with the issue under the formal stages of the Capability Procedure as set out below or, if appropriate, the Disciplinary Procedure.

Formal Stages

If managers need to handle capability problems formally, the following procedure should be followed:

- Write to the employee setting out their concerns and invite the employee to come to a meeting to discuss the matter. (Further information about Capability Hearings is set out below);
- Advise the employee that he or she has the right to be accompanied to the meeting by a workplace colleague or trade union official;
- At the meeting, explore thoroughly and objectively the root cause of the perceived lack of capability;
- Explain clearly and specifically to the employee in what respects he or she is failing to meet the standards required;
- Invite the employee to put forward his or her explanation for the apparent lack of capability, listen carefully to any representations made and take all the points raised by the employee into consideration;
- Check whether the job duties, standards of work, deadlines, priorities, etc have been fully and clearly explained to the employee and whether he or she would benefit from some additional training;
- If the problem is thought to be health-related, consider seeking the employee's consent to obtain a medical report;
- In consultation with the employee, set reasonable targets and time limits to improve to the required standard or level, which will be defined in measurable terms wherever possible;
- Maintain a full and accurate record of the areas in which the employee is experiencing difficulties or failing to perform, and of all discussions held with the employee about the matter;
- Set and adhere to a review date and re-appraise the employee's performance and level of improvement on that date.

Capability hearings

Unless it is impractical to do so, the employee will be given one week's written notice of the date, time and place of the capability hearing.

He/she will be informed in writing of the concerns over his/her performance and the basis for those concerns. The employee will have a reasonable opportunity to consider this information before the hearing.

The hearing will be held by the employee's manager or a more senior manager and the employee may bring a companion to the hearing (see Right to be Accompanied below).

He/she must take all reasonable steps to attend the hearing. Failure to attend a hearing without good reason may be treated as misconduct. If the employee or companion cannot attend at the time specified, he/she should inform Dorset Mind immediately and an alternative time will be sought.

A hearing may be adjourned if any further information needs to be gathered, or consideration needs to be given to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The employee will be given written confirmation of the decision, the reasons for it, and his/her right of appeal, within two weeks of a capability hearing (unless this time scale is not practicable, in which case the information will be confirmed as soon as is practicable).

Right to be accompanied at hearings

The employee has the right to bring a companion to any formal capability or appeal hearings under this procedure. The companion may be either a trade union representative who has been certified as competent to accompany them or by a work colleague of his/her choice. The employee must tell the manager conducting the hearing who the chosen companion is, in good time before the hearing.

Employees are allowed reasonable time off from duties without loss of pay to act as a companion, but there is no duty on employees to act as a companion if they do not wish to do so.

Dorset Mind may, at its discretion, allow the employee to bring a companion who is not an employee or union official (for example, a family member) where this will help overcome a particular difficulty caused by a disability, or where the employee has difficulty understanding English.

In all cases, the companion may make representations, ask questions, and sum up the employee's case, but will not be allowed to answer questions put directly to the employee. They may confer privately at any time during the hearing.

Stage 1: First capability hearing

Where performance is unsatisfactory, and informal steps have either failed to resolve the situation or are not appropriate, a first capability hearing will be held. This will follow the procedure set out under the Capability Hearings and Right to be Accompanied sections above.

The purposes of the first capability hearing include:

- setting out the required standards that are considered not to have been met
- allowing the employee an opportunity to explain the poor performance and ask any relevant questions
- discussing measures, such as additional training or supervision, which may improve performance
- setting targets for improvement
- setting a time-scale for review.

Following the hearing, the employee may receive a first written warning or improvement note, setting out:

- the areas in which he/she has not met the required performance standards;
- targets for improvement
- any measures, such as additional training or supervision, which will be taken with a view to improving performance
- a time-scale for review
- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The warning/improvement note will remain active for a specified period; after which time it will normally be disregarded for the purposes of the capability procedure. A record of the warning/note will form a part of the employee's personnel record.

The employee's performance will be monitored and at the end of the review period he/she will be notified in writing of the next step, as follows:

- if the manager is satisfied with his/her performance, no further action will be taken
- if the manager is not satisfied, the matter may be progressed to Stage 2; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2: Second capability hearing

If the employee's performance does not improve within the review period, or if there are further instances of poor performance while the first written warning/improvement note is still active, a second capability hearing will be held. This will follow the procedure set out under the Capability Hearings and Right to be Accompanied sections above.

The purposes of the second capability hearing include:

- setting out the required standards that are considered not to have been met
- allowing the employee an opportunity to explain the poor performance and ask any relevant questions
- identifying further measures, such as additional training or supervision, which may improve performance
- setting targets for improvement

- setting a time-scale for review.

Following the hearing, if appropriate, the employee may receive a final written warning/improvement note, setting out:

- the areas in which he/she has not met the required performance standards
- targets for improvement
- any measures, such as additional training or supervision, which will be taken with a view to improving performance
- a further time-scale for review
- the consequences of failing to improve within the time-scale, or of further unsatisfactory performance.

A final written warning/improvement note will normally remain active for a specified period; after which time it will be disregarded for the purposes of the capability procedure. A record of the warning/note will form a permanent part of the employee's personnel record.

The employee's performance will be monitored and at the end of the review period he/she will be notified in writing of the next step, as follows:

- if the manager is satisfied with his/her performance, no further action will be taken
- if the manager is not satisfied, the matter may be progressed to a stage 3 capability hearing; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 3: Dismissal or redeployment

If the employee's performance does not improve within the further review period set out in the final written warning/improvement note, or if there are further serious instances of poor performance while the final written warning/note is still active, a further capability hearing will be held. This will follow the procedure set out under the Capability Hearings and Right to be Accompanied sections above.

The purposes of the stage 3 hearing include:

- setting out the required standards that are considered not to have been met
- identifying areas in which performance is still unsatisfactory
- establishing whether there are any further steps that could reasonably be taken to rectify the poor performance
- establishing whether there is any reasonable likelihood of the required standard of performance being met within a reasonable time
- discussing whether there is any practical alternative to dismissal, such as redeployment to any suitable job that is available at the same or lower grade.

If performance remains unsatisfactory and there is to be no further review period, the employee may be redeployed into another suitable job at the same or lower grade or may be dismissed. Dismissal will normally be with full notice or payment in lieu of notice, unless the employee is guilty of gross misconduct, in which case he/she may be dismissed without notice or any pay in lieu.

Appeals

The employee has the right to appeal against the outcome of any stage of the formal capability procedure. He/she should do so in writing, stating full grounds of the appeal, to the line manager within five working days of the date on which he/she was informed of the decision.

Unless it is not practicable, the employee will be given between two days' and one week's written notice of the appeal hearing.

Where practicable, the appeal hearing will be held by a manager who is senior to the person who conducted the capability hearing. The employee may bring a companion to the appeal meeting (see Right to be Accompanied section above).

If the employee raises any new matters in the appeal, further investigation may need to be carried out. If any new information comes to light the employee will be provided with details in writing and will have a reasonable opportunity to consider this information before the hearing.

Depending on the grounds for the appeal, the appeal hearing may be a complete rehearing of the matter or a review of the original decision. Following the appeal, Dorset Mind may:

- confirm the original decision
- revoke the original decision; or
- substitute a different outcome.

The final decision will be confirmed to the employee in writing and, if possible, within two weeks of the appeal hearing. There will be no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of pay or continuity of employment.

Probationary Employees

This full procedure does not apply to probationary employees. However, in all cases, the requirements of the ACAS Code of Practice on Disciplinary & Grievance Procedures will be followed.

The line manager of a probationary employee will assess the employee's performance through the probationary supervision and review process. Warnings will be given to employees prior to any final action being taken should there be concerns about performance.

Where dismissal of the probationary employee is being considered due to unsatisfactory performance, the employee will be notified in writing of the problem, the time and venue for the probationary review meeting, the right to be accompanied by a union representative or a work colleague of his/her choice and the potential dismissal outcome. A meeting will be held and the employee will be entitled to appeal.

If the employee wishes to appeal against dismissal, he/she must do so in writing within five working days of receiving written notification of the dismissal, stating the reasons for the appeal. Where possible, the appeal hearing will be held by a manager who is senior to the manager who made the decision. The employee may be accompanied by a union representative or a work colleague of his/her choice at any appeal hearing. The final decision will be confirmed to the employee in

writing and, if possible, within five working days of the appeal hearing. There will be no further right of appeal.

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Consult the Chief Executive for the latest version of this procedure.

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