

CAPABILITY PROCEDURE

The Company expects all its employees to carry out their job functions and responsibilities within both a reasonable range of their individual capabilities and those required by the Company to make their input effective.

This procedure applies to all employees of the Company and its aim is to ensure consistency and fairness of treatment and to provide help and encouragement where an employee's capability fails to meet the required standards.

Whilst this procedure is not contractual, it should be followed wherever possible.

This Procedure will be invoked where informal discussions and/or coaching with the employee have been unsuccessful, or are considered inappropriate, in a given case.

Principles in Relation to incapability matters

The following principles will generally be applied to capability matters:

- this procedure will not usually be invoked until the issues concerned have been considered as far as is reasonably practicable
- at every stage of the procedure the employee concerned will be advised of the issues and given an opportunity to put forward his/her side of the matter before a formal decision is made
- the employee concerned has the right to be accompanied by a work colleague or accredited trade union representative at a Formal Review
- depending on the circumstances and the seriousness of the issue, one or more of the early stages of formal action may be omitted
- training, supervision, or increased supervision over a specified review period, may be attached to any formal action decided
- the outcome of the Formal Review will be advised or confirmed in writing
- the employee concerned will have the right to appeal against any formal action decided

Suspension

The Company reserves the right to suspend an employee on full pay pending the outcome of an investigation and/or Formal Review. The suspension is not a disciplinary penalty, carries no implication of guilt, and may not be appealed against. The period of suspension will be kept as short as possible. During a period of suspension, the employee concerned may not, unless advised to the contrary in writing, take part in the business of the Company and he/she may not be present on any of the Company's premises, and contact any of its business associates or employees (other than to arrange for a work colleague to accompany him/her at a Formal Review).

Capability Investigations

Whether during the course of suspension or otherwise, an employee whose work capability is being investigated shall promptly and fully co-operate with any investigation by responding to all enquiries and attending any meeting(s) called for the purpose.

There is no right to be accompanied during the course of responding to any enquiries or attending any investigatory meetings in this regard.

Notice of a Formal Review

The Company will set out in writing the issues relating to an employee's capability, and send this to the employee beforehand. A minimum of 48 hours' notice of a Formal Review will ordinarily be provided.

Where evidence has been obtained from third parties in the form of written statements, either the statements themselves, or a summary of their content will be provided to the employee at the same time as the notice of the Formal Review. The Company reserves the right, however, to conceal the identity of the parties who provided this evidence if it thinks it is necessary or appropriate to do so.

The employee will be invited to a Formal Review at a reasonable time and place where the matters can be addressed. The employee concerned must take all reasonable steps to attend. The Company will consider reasonable adjustments to this procedure in any case where the employee concerned is not able to attend a Formal Review by reason on health grounds.

The Formal Review

A Formal Review will ordinarily be conducted by the employee's manager or by another manager who is at the same level as, or more senior than, that manager.

The employee may, if he/she wishes, be accompanied by a work colleague or accredited trade union representative at the Formal Review. Notes will be taken at the time, and the employee's companion may also take notes if he/she wishes. No other form of recording will be permitted.

The employee will be allowed a full and fair opportunity to state his/her side of events and state any mitigating factors. He/she may do this personally, or the employee's companion (if he/she has elected to be accompanied) may do this on his/her behalf.

The chair will question the employee on his/her evidence. Although the employee may confer with his/her companion at any time during the Formal Review, the chair has the right to ask the employee personally to answer any questions put to him/her.

Depending on the circumstances, any investigator who has been involved in the matter may be called to attend the Formal Review to take those present through his or her report. The investigator will then withdraw.

The chair will adjourn to reach a decision.

Either at the Formal Review or as soon as possible afterwards, the Chair will express his or her decision clearly, explain the reason(s) advise the outcome, and of the employee's right of appeal. The Chair will confirm the outcome in writing. That confirmation will set out the action decided, the reasons, and the employee's right of appeal (and how and when this may be exercised).

Formal Action

There are four levels of formal action that may be decided which ordinarily are progressive, depending upon the seriousness of the issues. However the Company reserves the right to invoke a higher level of formal action (including Level 4) where this is justified by the circumstances concerned.

The levels of formal action are:

1. Verbal Caution

A note of the caution will be kept on file but will be considered spent and disregarded for disciplinary and other purposes after six months, subject to satisfactory attendance, conduct and job performance being achieved and maintained.

2. First Written Caution

If the issue is serious, or if insufficient improvement has been achieved and maintained in relation to an employee's job performance, or if a further issue of a similar kind occurs during the currency of a previous caution, then consideration to formal action at this Level 2 will be given. This will give details of the issue, the improvement required and the timescale over which that improvement must be achieved and maintained. A copy of the caution will be kept on file but will be considered spent and disregarded for disciplinary and other purposes after twelve months.

3. Final Written Caution

If the issue is very serious, or if insufficient improvement has been achieved and maintained in relation to an employee's attendance, conduct or job performance, or if a further issue of a similar kind occurs during the currency of a previous caution, then consideration to formal action at this Level 3 will be given. This will give details of the issue, the improvement required and the timescale over which that improvement must be achieved and maintained. A copy of the caution will be kept on file but will be considered spent and disregarded for disciplinary and other purposes ordinarily after twelve months.

4. Invoking the Disciplinary & Dismissal Procedure

If insufficient improvement has been achieved and maintained in relation to an employee's attendance, conduct or job performance, or if a further issue of a similar kind occurs during the currency of a previous caution, then consideration will be given to invoking the Disciplinary & Dismissal Procedure action at this Level 4.

Appeals against formal action taken under the Incapability Procedure

An employee has the right to appeal against any level of formal action.

Notice of any appeal must be made in writing to the Employee-Relations Consultant and sent to ensure that it is received within five working days of the date of the Company's letter advising or confirming the formal action being taken against him/her.

When giving notice of an appeal, the employee should state:

- a) the grounds of appeal; and
- b) whether he/she is appealing against the finding of incapability or against the level of formal action taken; and
- c) the outcome sought.

The Company will confirm in writing receipt of the employee's notice of appeal and ask for any clarification needed in relation to the grounds for appeal. Any new relevant facts will ordinarily be investigated.

Arrangements will be made for the Appeal Hearing to be held as soon as possible afterwards.

The Appeal Hearing will, wherever possible, be conducted by a more senior manager to the one who decided the Formal Review.

The employee may, if he/she wishes, be accompanied at the Appeal Hearing by a work colleague or accredited trade union representative. Whilst the employee may confer with him/her, that employee will be expected to reply directly to all questions asked of him/her. Notes will be taken at the time, and the employee's companion may also take notes if he/she wishes. The employee's companion may speak when invited to do so.

The senior manager will consider any representations made by the employee, any companion, any investigator, and the manager who conducted the Formal Review and decided the formal action taken.

The decision on appeal may be:

- to withdraw the formal action decided;
- to substitute formal action at a lower level (but not at a higher level unless further facts and issues have come to light which were not known and considered at the time of the Formal Review);
- to uphold the formal action decided.

There is no further right of appeal.

For the avoidance of doubt, any formal action (including dismissal) taken remains in full force and effect unless and until overturned on appeal.

Alternative Dispute Resolution

Entirely without prejudice to the position of anyone concerned in any capability proceedings, the Company may be prepared to consider an informal process for

resolving the issues in any particular instance. Further details may be obtained from the Employee Relations Consultant.