

Capability Policy

1 Purpose

- 1.1 This policy outlines Healthwatch Worcestershire's approach to dealing with Capability (lack of competence) and follows ACAS guidance and the ACAS Code of Practice.
- 1.2 The policy applies to all Healthwatch Worcestershire employees.
- 1.3 This policy is not contractual and does not form part of an employee's contract of employment. Healthwatch Worcestershire reserves the right to make amendments to this policy from time to time at its sole discretion.

2 When to use the Capability Procedure

- 2.1 Capability is where an employee fails to achieve an acceptable standard of work performance due to lack of competence (knowledge, skills, abilities), ie through no fault of their own. This can be distinguished from poor performance arising from lack of application, poor attitude or wilful refusal, which would be dealt with under the Disciplinary Procedure.
- 2.2 Healthwatch Worcestershire reserve the right to use these 2 procedures interchangeably, ie a capability issue may become disciplinary where it becomes clear the employee has stopped trying to improve or alternately, on occasions, it may become more appropriate to transfer to the Capability Procedure following investigation and action under the Disciplinary Procedure. The level of sanctions will be the same.

3 Principles

- 3.1 Poor work performance has a negative impact on productivity, workplace effectiveness, health and safety and can lead to resentment by those employees performing to a satisfactory standard. However, Healthwatch Worcestershire recognises that an individual's performance can vary from time to time and is committed to fair and consistent treatment of employees at times when their performance falls below an acceptable level.
- 3.2 The organisation will make clear its expectations and will support and encourage all employees to reach the standards of work required. In return, employees will recognise that they have a contractual responsibility to maintain an acceptable level of performance at work and a duty to advise their manager if there are reasons why they are unable to perform at the expected level.
- 3.4 Healthwatch Worcestershire will support employees in achieving and maintaining the required standards by providing structured and tailored induction, managed probation, regular 1-to-1 review and annual Performance Development Review (appraisal).

- 3.5 Where an employee's performance declines, Healthwatch Worcestershire will endeavour to address at the earliest opportunity and where it is reasonable to do so, will manage informally through management intervention outside the Capability Procedure.
- 3.6 Where ongoing or more serious capability issues are identified, the employee will be advised of the concerns and will be given fair opportunity to respond and time to improve before any decision is made.
- 3.7 An employee will be given appropriate support, supervision, coaching, counselling and training to address the capability issues and dismissal will be the last resort.

3 Fairness

- 3.1 Where the formal Capability Procedure is invoked, the employee will be given sufficient notice of any Capability meeting to enable them to prepare their case.
- 3.2 During any formal Capability Meeting (or subsequent Appeal Hearing), the employee will be entitled to seek advice from and be accompanied by a trade union representative or work colleague (employee of Healthwatch Worcestershire). The colleague will be allowed to attend in duty time and will be allowed reasonable time to familiarise him/herself with the details of the case.
- 3.3 Management reserve the right to request that the employee choose a different colleague where the attendance of the original person may cause a conflict of interest or lead to unreasonable delay or expense.
- 3.4 This policy does not allow for either party to be legally represented at either the Capability Meeting or any subsequent Appeal. In some circumstances, eg an employee with a disability, a reasonable request for an external companion such as a support worker will be given fair consideration.
- 3.5 Where the Capability Procedure is imposed, the employee will receive written confirmation with a clear Improvement Plan and will be formally advised of their right of appeal.

4 Confidentiality

- 4.1 Written records of any formal Capability Meetings including any minutes or contemporaneous notes will be kept and maintained in accordance with the Data Protection Act 2018

5. Audit and Review

- 5.1 A review of this policy will take place annually unless legal, contractual, specific business requirements, operational changes or events necessitate an earlier review.
- 5.2 This policy will be subject to Equality Impact Assessment under the Public Sector Equality Duty Act 2010.

Capability Procedure

1 Setting Performance Standards (Objectives)

- 1.1 Managing work performance should be part of an overall performance management process which also includes carrying out regular appraisals and identifying and meeting learning and development needs.
- 1.2 Managers will be responsible for setting performance objectives and ensuring that progress is reviewed at regular intervals.

Performance objectives will be set as part of:

- i) the employee's Probationary Period;
 - ii) annual Personal Development and Review (the appraisal);
 - iii) regular 1-to-1 meetings with the employee.
- 1.3 Performance objectives will be derived from the Job Description and review of the short and long term plans of the organisation and/or business area.
 - 1.4 Wherever possible, performance objectives should be agreed as fair, reasonable and achievable. Where the manager and the employee's opinion differ, the manager will listen to the employee's views before finalising the objectives.

2 Probationary Period

- 2.1 Managers will be responsible for setting performance objectives and ensuring that progress is reviewed at regular intervals. The manager will raise any concerns at the earliest opportunity, providing support as needed; this may include advice, coaching, counselling or additional training.
- 2.2 It is extremely important that early problems are resolved before bad working practices become entrenched and before supervision is relaxed. Where performance issues arise at a later date, it is frequently the case that early signs were apparent but not robustly dealt with during probation.
- 2.3 Where formal Capability action becomes necessary during the Probationary Period, the minimum sanction will be a Final Written Warning, ie giving the individual a final opportunity to improve before their Probation is terminated.

3 Performance Development Review (Appraisal)

- 3.1 Healthwatch Worcestershire is committed to an annual Performance Development Review (PDR) to evaluate the year's performance, recognise positive work, manage shortcomings and development needs and renew performance objectives.
- 3.2 Performance issues should not be raised for the first time in the PDR meeting, ie there should be no surprises. However, it is wholly appropriate

to discuss ongoing performance issues.

4 1-to-1 meetings

- 4.1 Good performance relies on regular contact between the manager and employee to discuss ongoing issues, resolve problems and encourage strong and consistent performance. The regularity and formality of 1-to-1 meetings will vary according to need but where performance has become a concern, the frequency of meetings will be increased.

5 Dealing informally with capability issues

- 5.1 The manager will ensure that any concerns are raised with the employee at the earliest opportunity, identifying the shortfall in terms of both quality and quantity. The manager will explore with the employee what they see as reasons or underlying causes for the shortfall which may include:

- insufficient knowledge
- inadequate skills or experience
- not understanding management expectations
- inadequate or contradictory guidance
- insufficient supervision
- lack of training
- changes to technology, systems or working practices
- reduced staffing levels
- difficulty with colleagues/conflict
- external factors
- personal problems
- ill health or injury
- work-related stress
- disability.

- 5.2 In some cases, the manager will reach the view that the issue is not lack of competence, but lack of application, ie 'can do, won't do'. Whilst it is important to establish reasons for the employee's attitude/behavior, following informal management intervention, it may be more appropriate to manage the issue under the Disciplinary Procedure.

- 5.3 Where the manager reaches the view that the issue is capability and an immediate resolution is not available, an informal action plan will be agreed to address the shortfall within a realistic timescale. This will usually be 4-6 weeks. Support measures will be agreed which may include (but will not be limited to) coaching, counselling, on-the-job or off-the-job training, following a work-book, shadowing another employee or other tailored development opportunities.

- 5.4 Regular reviews will be arranged to check progress; these may form part of the routine 1-to-1 meetings and where necessary, these will be increased in frequency.

- 5.5 Managers should retain their own notes of informal performance management and the support provided for a reasonable period until they are satisfied that the employee fully understands and accepts the expectations and improvement has been achieved and sustained.

6 When Capability is affected by Ill Health

- 6.1 Where an employee's capability is affected by ill health and they do not wish to take sick leave, the manager will consider whether any short-term temporary adjustments can be made to workload or working conditions to support them. However, where temporary adjustments do not remedy the problem or need to be unreasonably extended, the employee will be required to take sick leave; presenting themselves at work commits the employee to performing their duties to an acceptable standard.

7 When Capability is affected by Disability

- 7.1 Healthwatch Worcestershire is committed to supporting employees who have or develop a disability and will make permanent reasonable adjustments to allow them to carry out their role to a satisfactory standard.
- 7.2 Any employee who believes their disability may be negatively impacting on their performance should discuss in confidence with their manager so that reasonable adjustments can be considered.

8 When should the Capability Procedure be invoked?

- 8.1 The Capability Procedure should be invoked when the required improvement is not achieved, or following a period of improvement, the employee lapses again.
- 8.2 The employee should be verbally advised that the formal Capability Procedure is to be invoked and given sufficient notice of the date of the meeting to allow them to gather evidence to support their case.

9 Formal Capability Procedure

- 9.1 Capability Meetings will be chaired by an appropriate senior manager; Healthwatch Worcestershire have nominated the Managing Director and he/she will usually chair such meetings unless there is a good reason to nominate an alternative manager.
- 9.2 The employee will be entitled to seek advice from and be accompanied at any formal Capability meeting by a trade union representative or work colleague (employee of Healthwatch Worcestershire).

10 Stage 1 - First Written Warning

- 10.1 Where an informal management intervention has not produced the required improvement, a First Written Warning will usually be considered. A First Written Warning will remain 'live' for 12 months; this means that even where the employee initially shows improvement, the procedure can be escalated if performance lapses again within the duration of the warning.
- 10.2 The employee will receive a letter within 5 days of the Capability Meeting advising of the warning and the right of appeal. The letter will also warn that further Capability action will be considered at Stage 2 if improvement is not achieved and sustained within the 12 months duration of the warning.
- 10.3 A formal Improvement Plan will be attached, detailing the objectives or targets set, how these will be measured, any additional support agreed and the timescale for improvement; the timescale will usually be 6 weeks but will never exceed 3 months. A formal review date will be set. The employee will be required to sign the Improvement Plan to confirm their acceptance.
- 10.4 The Improvement Plan will be formally reviewed at the review date. Where objectives/targets have been met, this will be recognised but the employee will be reminded that the warning will remain in place and their performance will continue to be informally monitored.

Where there has been some significant improvement, but objectives/targets have not yet been met, the Improvement Plan will be extended and the employee will be reminded of the duration of the warning.

Where there is no significant improvement, Stage 2 Capability will be invoked.

11 Stage 2 - Final Written Warning

- 11.1 A Stage 2 Capability Meeting will usually result in a Final Written Warning which will remain 'live' for 12 months; this means that even where the employee initially responds well, the procedure can be escalated if performance lapses again within the duration of the warning.
- 11.2 The employee will receive a letter within 5 days of the Capability Meeting advising of the Final Written warning and the right of appeal. The letter will also warn that dismissal will be considered at Stage 3 if improvement is not achieved and sustained within the 12 months duration of the Final Written warning.
- 11.3 A formal Improvement Plan will be attached, detailing the objectives or targets set, how these will be measured, any additional support agreed and the timescale for improvement; the timescale will usually be 6 weeks but will never exceed 3 months. A formal review date will be set. The employee will be required to sign the Improvement Plan to confirm their acceptance.
- 11.4 The Improvement Plan will be formally reviewed at the review date. Where objectives/targets have been met, this will be recognised but the employee

will be reminded that the Final Written warning will remain in place and their performance will continue to be informally monitored.

Where there has been some significant improvement, but objectives/targets have not yet been met, the Improvement Plan will be extended and the employee will be reminded of the duration of the warning.

Where there is no significant improvement, Stage 3 Capability will be invoked.

12 Stage 3 - Dismissal or action short of dismissal

12.1 A Stage 3 Capability Meeting will review the employee's performance over the whole timescale of the Capability Procedure.

12.2 The manager will write to the employee detailing the previous stages and the current shortcomings and will advise the employee of the options available at the Stage 3 Capability Meeting. These will be:

- Dismissal with contractual notice;
- Demotion or transfer to a more suitable job, if available (NB where the alternative job is at a lower salary, no compensation will be paid);
- Extension of the Improvement Plan where there is significant mitigation and a genuine belief that the employee's performance will improve.

12.3 For a dismissal to be fair, the manager must be satisfied that there is sufficient reason to justify dismissal, reasonable alternatives to dismissal were properly considered, the dismissal is consistent with past precedent and the Capability Procedure has been properly followed.

12.4 Where an employee is dismissed, full reasons for dismissal will be confirmed in writing within 14 days of the Capability Meeting. The employee must be advised of the date on which their employment will terminate and what payments will be made to them upon termination, eg accrued holiday pay. The employee will be advised of their right of appeal.

13 Appeals

13.1 Appeals are an essential part of natural justice and all employees have the right of appeal against Capability sanction. Any appeal should be in writing and received within 5 days of the date of the letter confirming the Capability decision, stating the reason for the appeal.

13.2 Healthwatch Worcestershire has nominated the Chairman to manage appeals and he/she will usually chair such Hearings unless there is a good reason to nominate an alternative Director. The Chairman may delegate responsibility at his/her discretion to an alternative and impartial Director of the Healthwatch Worcestershire Board.

- 13.3 An Appeal Hearing will normally be held within 10 working days of receiving the notice of appeal.
- 13.4 The purpose of the appeal is to review the decision made and the sanction imposed.
- 13.5 The employee is entitled to be accompanied by a trade union representative or colleague at the Appeal Hearing.
- 13.6 The Chairman may give his/her decision at the end of the Hearing, or on occasion may wish to further reflect and, in such instance, will give his/her decision in writing as soon as is practicable but in any event no later than 7 days after the Appeal Hearing (unless, in special circumstances, an extension has been agreed). In delivering his/her decision, the Chairman should explain how his/her decision was reached.
- 13.7 Appeals at Stages 1 and 2

The Chairman will consider the performance against objectives and the actions to date. Options available are:

- To uphold the appeal, ie lift or reduce the warning;
- To confirm the warning but impose an alternative Improvement Plan;
- To confirm the decision made at the Capability Meeting.

13.8 Appeal at Stage 3

Decisions available to the Chairman are:

- To reinstate the Final Written Warning with a further Improvement Plan;
- Demotion or transfer to a more suitable job, if available (NB where the alternative job is at a lower salary, no compensation will be paid);
- To confirm dismissal.

- 13.9 Where a different decision is made at the Appeal Hearing, it should not be seen to undermine the decision-making manager's authority, but makes clear the independent nature of the appeal.
- 13.10 Where an appeal against dismissal is upheld, the employee will be reinstated with no break in service and paid as if they had been at work throughout.
- 13.11 Where the appeal against dismissal fails, the effective date of termination will be as directed as the Capability Hearing.
- 13.12 The decision of the Chairman is final and will conclude the internal procedure.

14 Removal of warnings from Personal file

- 14.1 When warnings cease to be 'live' they will be removed from the Personal file. However, in line with Healthwatch Worcestershire's Retention and Disposal policy, discipline files will be retained separately and confidentially.