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HUMAN RESOURCES

Capability Procedure



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I. General

- 1.1 This section sets out the procedure to be followed where an employee consistently or seriously fails to meet the work standards required to perform the duties of their post. Where issues of performance arise, managers are advised to act at the earliest possible stage.
- 1.2 Managers will seek to resolve problems through normal supervision and informal discussion but if satisfactory improvement is not achieved within a reasonable time-scale then the matter should be dealt with under the formal stages of the procedure.
- 1.3 Where the employee is incapable of performing their duties as a result of absence due to sickness or injury the [Managing Sickness Absence policy](#) will apply. If the employee is at work but unable to perform their full duties due to a health condition then managers will be expected to consider reasonable workplace adjustments before continuing with the capability procedure if the performance remains unsatisfactory or where the individual is unable to fulfil their role due to their medical condition.
- 1.4 The employee's manager will be responsible for taking formal action regarding poor performance in accordance with the procedure up until any hearing to consider dismissal.
- 1.5 If an employee has specific needs relating to a disability then reasonable adjustments will be made to assist them in participating in any hearings.

2. Supervision and Informal Discussion

- 2.1 Managers must ensure that employees are aware of the standards of work required of them and how their performance will be assessed. Performance standards must be set and monitored during PRADS and normal supervision meetings. Managers are required to provide appropriate supervision, training and support to assist employees to reach the required standard of performance. Initially any problems should be discussed with the employee on an informal basis. However, if an employee seriously or consistently fails to meet the required standard then this must be discussed in the normal supervision meetings and [PRADS](#). The manager must keep a record of these discussions and provide a copy to the employee concerned.
- 2.2 At this stage, the manager should attempt to explore if there are any underlying reasons for the employee's poor performance. For example the employee may require training or could have a health issue. There could be issues which have arisen concerning the employee's personal life which are adversely affecting his or her performance at work. Managers are expected to discuss problems in a constructive and sympathetic way, and to identify appropriate action to remedy the situation.
- 2.3 Only when attempts to resolve problems through normal supervision and discussion have been unsuccessful should the matter be progressed to the formal stage of the

procedure. Further guidance on managing performance is set out within the Management Guidance Notes.

- 2.4 Where an employee fails to meet the required standard set during supervision then the manager should write to the employee arranging a formal review as set out below. A representative of HR should also be in attendance at all formal meetings.
- 2.5 It will normally be necessary to follow all stages of the formal procedure as set out below. However, in serious and exceptional cases of very unsatisfactory performance it may be appropriate to move straight to Stage 2.

3. **Capability and Ill Health**

- 3.1 An employee's health condition should not prevent the manager from taking steps to manage capability. Absence due to sickness or injury will be subject to the [Attendance Management Policy](#). However, the capability procedure will continue upon the employee's return to work or where the employee has remained in work.
- 3.2 The manager should make an assessment to identify whether there are any adjustments or support which would assist the employee to regain an effective level of performance. In the case of disability, the Equality Act (2010) places a legal obligation on the employer to identify and put in place reasonable adjustments and the **Managers Guide to Supporting Disabled Staff in the Workplace** [link] provides further advice. An assessment should happen as part of the return to work process, or, if the employee remains at work, as soon as there is evidence of the health condition impacting upon performance. Adjustments may be temporary to deal with an acute health issue or longer term to deal with a chronic illness. They may include revised working hours, amended duties or workplace adaptations. Adjustments must be kept under regular review.
- 3.3 Occupational Health can provide advice on the efficacy of the adjustments in alleviating any disadvantage faced by the employee. But ultimately it is for the manager to make a decision on what adjustments and timeframe are reasonable in line with business needs. Management action to manage capability should continue as normal once any agreed adjustments are in place. A period of time may be required to allow agreed adjustments to become effective.
- 3.4 Where adjustments have proven ineffective in improving performance, or where it is not possible to make adjustments which would enable the employee to undertake their role effectively, the manager should take a supportive approach and explore with the employee options such as redeployment to a more suitable role, a permanent change in working pattern or ill health retirement. This scenario may arise in

cases of degenerative disease or significant deterioration in health. However, if all reasonable options have been exhausted and performance remains below the required standard then it may be appropriate to move straight to Stage 2 of the procedure. Advice from HR Professional Services and an up to date OH review must be obtained before proceeding straight to Stage 2.

4. Stage 1: Written Warning

- 4.1 The manager will arrange a formal performance review hearing. The letter notifying the employee of the hearing will provide them with at least 5 working days' notice of the date of the hearing, explain why the employee's performance is considered unsatisfactory and that a formal warning may be issued. The employee will also be notified of their right to be accompanied by a trade union representative or another employee of Royal Greenwich.
- 4.2 The hearing should be conducted by the employee's manager. The manager must:
- Explain how the employee is failing to perform/has failed to perform to the standard expected.
 - Ask the employee if there are any reasons why performance is below the standard expected.
 - Consider any explanations given, and whether any other information is required before making a decision. In the case of ill health, the need to take advice from Occupational Health regarding current health, adjustments, likelihood of and timescale for an improvement in health. This may also include consideration of redeployment or ill health retirement.
 - Consider any training, support or health-related adjustment needs and how these can be met.
 - Adjourn the hearing in order to decide whether a Written Warning should be issued.
- 4.3 Where the manager decides a Written Warning should be issued to the employee they should inform the employee either at the conclusion of the hearing, and/or in writing within 5 working days of the hearing. A letter must be sent to the employee setting out:
- The matters discussed at the meeting.
 - The decision taken i.e. that a written warning has been given.

- Achievable targets for the employee to meet and specifying a time period within which they must be met. The targets must be reasonable.
- When the next review of the employee's performance will take place. In the case of ill health capability this may include further input from Occupational Health and review of any agreed adjustments.
- That the written warning will remain in force for a period of 12 months and that performance will continue to be monitored.
- That unless performance improves to a satisfactory standard within the period set, they may be subject to further action.
- The employee's right to appeal against the decision in accordance with section 6.
- Guidance regarding distribution of the notes of the hearing are detailed in section 6 of this procedure.

5. Stage 2: Final Written Warning

- 5.1 Where an employee's performance continues to be unsatisfactory and they fail to reach the standards set when a formal written warning was issued then the manager will arrange a hearing. In the case of a very unsatisfactory performance, and in the case of health related capability where all reasonable options have been exhausted (see section 3), the manager may decide that it is more appropriate to progress straight to a Stage 2 hearing. The letter notifying the employee of the hearing will provide them with at least 5 working days' notice of the date of the hearing; explain why the employee's performance continues to be unsatisfactory and that a further warning may be issued. The employee will also be notified of their right to be accompanied by a trade union representative or another employee of Royal Greenwich and their ability to respond to the matter at the hearing.
- 5.2 At the hearing the manager must:
- Reiterate the standard of performance expected by Royal Greenwich.
 - Explain how the employee has failed to perform during the review period.
 - Give the employee an opportunity to state their cases and present any reasons for the failure to perform to the standard expected.

- Consider any explanations given and whether any other information is required before making a decision. In the case of ill health, the need to take advice from Occupational Health regarding current health, adjustments, likelihood of and timescale for an improvement in health. This may also include consideration of redeployment or ill health retirement.
- Consider any training or support needs and how these can be met.
- Adjourn the hearing in order to decide whether a Final Written Warning should be issued.

5.3 Where the manager decides a Final Written Warning should be issued to the employee they should inform the employee either at the conclusion of the hearing, and/or in writing within 5 working days of the hearing. A letter must be sent to the employee setting out:

- The matters discussed at the meeting.
- The decision taken i.e. that a Final Written Warning has been given.
- Achievable targets for the employee to meet and specifying a time period within which they must be met. The targets must be reasonable.
- When the next review of the employee's performance will take place.
- That the Final Written Warning will remain in force for a period of 12 months and that performance will continue to be monitored.
- That continuing poor performance and failure to meet the targets set out in accordance with the above timescales may result in dismissal.
- The employee's right to appeal against the decision in accordance with section 6.
- Guidance regarding distribution of the notes of the hearing are detailed in section 6 of this procedure.

In the case of ill health related capability the following additional steps will be required:

- the need to take a final view from Occupational Health regarding current health, adjustments, likelihood of and timescale for improvement in health, and likelihood of ill health retirement to ensure that advice is current (i.e. less than 6 weeks old) at any stage 3 meeting. A review should take place immediately after the receipt of any new Occupational Health information.

- That where ill health retirement is not requested or is not an option, redeployment is not possible and where there is no likely improvement in health to enable the employee to undertake the role with reasonable support, that dismissal may be the outcome of the next meeting.

6. Stage 3: Dismissal

- 6.1 Where an employee's performance continues to be unsatisfactory and fails to reach the standards set following a Final Written Warning, the manager will arrange a further formal hearing. The letter notifying the employee will provide them with at least 5 working days notice of the date of the hearing, explain why the employee's performance is considered unsatisfactory and that consideration will be given to their dismissal. The employee will also be notified of their right to be accompanied by a trade union representative or another employee of Royal Greenwich.
- 6.2 The formal hearing to consider dismissal will be conducted by a Senior Manager graded at or above PO6 who has not previously been involved in formal hearings to assess the employee's capability. The Senior Manager may be from the same Directorate but must be graded above the manager.
- 6.3 At the hearing the manager of the employee will explain how the employee's performance has failed to meet the standard expected and the targets set at previous hearings. The manager should also explain any steps taken to provide health-related adjustments, attempts to redeploy and the outcome of any consideration of ill health retirement.
- 6.4 The employee will be asked to respond to the allegations and explain any reasons for the failing to meet the required standard.
- 6.5 The Senior Manager will adjourn the hearing to consider information provided by the manager and employee and make a decision regarding whether the employee should be dismissed.
- 6.6 If the Senior Manager decides that the employee should not be dismissed they should inform the employee of what further action, if any, will be taken. This must be confirmed in writing within 5 working days of the hearing. The Senior Manager may decide that there is a need for further monitoring of the employee's performance. In the case of ill health there will need to be a focus on adjustments and/or redeployment. This will need to be explained in the letter with clear timescales.
- 6.7 If the Senior Manager decides the employee should be dismissed they should inform the employee. This must be confirmed in writing within 5 working days of the hearing. Account will also need to be taken of the employee's notice period. The letter will also need to set out:

- Details of the poor performance and why the decision was taken to dismiss the employee.
- In the case of ill health capability, any adjustments and the outcome of any redeployment and/or ill health retirement process.
- Confirmation of the notice period.
- The employee's right to appeal against the decision in accordance with section 6.
- Inform the employee of the right to appeal to and the procedure for doing so.

7. Minutes

- 7.1 The notes taken at all of the hearings must be shared with all parties present, including the employee and their representative within 2 weeks of the date of the hearing.
- 7.2 Copies of the notes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the notes they should make their comments in writing which should then be retained and noted for the records.

8. Appeals

- 8.1 A representative of HR will attend appeal hearings to advise the Appeal Officer.
- 8.2 Appeals will be considered in accordance with the model appeals procedure.

APPEALS AGAINST WARNINGS

- 8.3 To register an appeal against a warning the employee or their representative must write to the manager setting out the grounds of their appeal within 10 working days of the date of the letter confirming the warning.
- 8.4 Appeals against Written Warnings will be considered by an Appeal Officer graded not less than PO2.
- 8.5 Appeals against Final Warnings will be considered by an Appeal Officer graded not less than PO4.

- 8.6 The Appeal Officer must be higher graded than the appellant and at least equal in seniority to the manager who made the decision to issue a warning.
- 8.7 Appeals will be heard by the next level manager in the same area.

APPEALS AGAINST DISMISSAL

- 8.7 To register an appeal against dismissal the employee or their representative must write to HR setting out the grounds of their appeal within 10 working days of the letter confirming their dismissal.
- 8.8 Appeals against dismissal will be considered by an Appeal Officer who will be a Senior Manager in another Directorate., higher graded than the appellant and at least equal in seniority to the Senior Manager who made the decision.

9. Right to be accompanied

- 9.1 Employees have the right to be accompanied by a trade union representative or work colleague from Royal Greenwich at any formal hearing. The representative has the right to present the employee's case and respond on their behalf to views expressed at the hearing. The representative may not answer questions on behalf of the employee.
- 9.2 If the representative is not available on the date of the hearing then the employee may propose a reasonable alternative date, which may be up to five working days after the original proposed date.

10. Further information

- 10.1 For further information on the operation of this procedure, please contact HR Professional Services in the first instance.