



MERSEYSIDE WASTE DISPOSAL AUTHORITY

CAPABILITY POLICY AND PROCEDURE

Authorised by: MWDA Full Authority

Issued by: PP

Issue no: 05

Date of Issue: 25th May, 2018

Document control:CG01-Capability Policy-CS-Pol-13-PP-05

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Authorised by: MWDA Full Authority
Issued by: PP
Issue no: 05

Date of Issue: 25th May, 2018

Document control:CG01-Capability Policy-CS-Pol-13-PP-05

POLICY

The Authority will always seek to ensure that its employees meet the expected standard of performance/attendance in their work.

To this end the Authority will ensure that its employees are made aware of the standard of performance/attendance required of them and that they are given appropriate support and training.

Should a capability problem arise the Authority will take positive action from an early stage to enable the employee to perform to standard.

Where it does not prove possible to remedy a capability problem, the Authority will ensure that a fair procedure is followed and that all avenues are explored before termination of employment on grounds of capability is put into effect.

Aims

- To enable employees with capability problems to achieve the standard of performance/attendance required of them in their work.
- To ensure that employees with capability problems receive full and appropriate support.
- To ensure that employees with capability problems receive fair and consistent treatment.

Scope

This procedure covers all employees of the Authority.

Throughout, reference is made to Section Managers as the persons responsible for implementing the procedure and conducting interviews (short of final interviews leading directly to dismissal).

Where the capability of a Section Manager is in question, the same procedure will apply with responsibility for implementation being exercised by the Director.

Where the capability of a Director is in question, the same procedure will apply with responsibility for implementation being exercised directly by the Chief Executive.

Where the capability of the Chief Executive is in question, the same procedure will apply with responsibility for implementation being exercised by the Clerk to the Authority.

Authorised by: MWDA Full Authority

Issued by: PP

Issue no: 02

Date of Issue: 17TH April, 2012

Document control:CG01-Capability Policy-CS-Pol-13-PP-02

Relationship with Other Procedures

Where, due to lack of ability or skill, an employee is unable to achieve the required standard of performance/attendance in the job which they are employed to do, this Capability Procedure will be invoked.

- Where an employee is unable to perform to standard because of ill-health absence, this Capability Procedure will be invoked.
- Where it becomes apparent that an employee's poor performance is due to negligence or misconduct, the Authority's Disciplinary Procedure will be invoked.

Training

The Chief Executive will ensure that those responsible for implementing the Capability Procedure are provided with sufficient resources and training to do so effectively. Whenever possible training will take place prior to implementation.

Monitoring the Capability Procedure

The Authority's Capability Procedure will be kept under review by the Business Services Manager to ensure that it is appropriate, effective, and consistent with employment law.

Avoiding Capability Problems

To reduce the likelihood of capability problems arising the Authority will require its managers to: -

- ensure that the standards of performance/attendance expected of employees are reasonable.
- communicate those standards to employees - on commencement of employment, promotion, and whenever a post is affected by change.
- take due care in the recruitment and selection process.
- monitor probationary periods carefully to identify and remedy problems at the outset.
- ensure that employees are at all times provided with the necessary support and training.

Redeployment

Where, at any stage of the Capability Procedure, despite encouragement and support, an employee is unable to produce the required standard of performance/attendance in their job, consideration will be given to the possibility of redeployment.

If redeployment is a possibility the employee will be involved in the discussions at all stages and has the right to be accompanied and represented by their Trade Union representative or by a colleague of their choice.

Authorised by: MWDA Full Authority

Issued by: PP

Issue no: 02

Date of Issue: 17TH April, 2012

Document control:CG01-Capability Policy-CS-Pol-13-PP-02

Right to Representation

Employees are entitled to be accompanied and represented by a Trade Union representative or by a colleague at any formal stage of the Capability Procedure and shall have their attention drawn to that fact.

Employees are entitled to consult with their Trade Union representative or colleague, in private, at any stage of the proceedings.

At the informal stage of the Capability Procedure, employees may choose to be supported by a colleague (who may be a Trade Union representative), in which case the Business Services Manager will monitor the interview. Employees will be given at least one day's verbal notice of an informal interview to enable any such arrangements to be made.

Review Periods

Where a Section Manager sets a review period at any stage of the Capability Procedure, they will ensure that its length is reasonable in relation to the nature of the employee's work and the length of time necessary to determine whether an improvement in performance attendance has occurred. The Section Manager will also take the quality and length of the employee's previous service into consideration.

The employee's progress will be monitored throughout the review period and appropriate, agreed support will be provided. Support measures may include training, a period of closer supervision, alterations to established working methods, etc., as well as moral support.

No further formal action will be taken under the Capability Procedure until a review period has elapsed. To enable a fair assessment to be made, a review period will be extended if the employee is absent from work for a substantial part of it.

Review periods will not normally be allowed to overrun without assessment at a further interview with the employee.

Where the employee achieves and sustains the required standard of performance/attendance, they will receive immediate confirmation of this from the Section Manager in person. The progress made should be reinforced by further encouragement in the interview held at the end of the review period.

Where a formal warning has been issued (see below), successive review periods will be set and follow-up interviews will be held throughout its duration, even after the required performance/attendance improvement has been demonstrated.

Warnings

Authorised by: MWDA Full Authority

Issued by: PP

Issue no: 02

Date of Issue: 17TH April, 2012

Document control:CG01-Capability Policy-CS-Pol-13-PP-02

Under the Capability Procedure, where circumstances warrant it, an employee may be formally warned that their level of performance/attendance does not meet the required standard and that failure to improve could eventually result in dismissal.

- Stage 1 - A verbal warning will remain live for six months. If no further formal action is found to be necessary within that period, it will be expunged from the employee's record.
- Stage 2 - A first written warning will remain live for one year. If no further formal action is found to be necessary within that period, it will be expunged from the employee's record.
- Stage 3 - A final written warning will remain live for two years. However, if no further formal action is found to be necessary within the first 12-month period it will be reduced to a first written warning. Thereafter, if no further formal action is found to be necessary within the second 12-month period, the warning will be expunged from the employee's record.
- If an employee fails to demonstrate the required improvement in performance/attendance during the life of a final written warning, they may be dismissed on grounds of incapability.

Where it proves necessary to issue warnings over successive stages of the formal Capability Procedure, the above sequence will normally be followed.

However, depending upon the seriousness of the situation, it may on rare occasions be appropriate to move immediately to a later stage of the procedure with its associated sanction.

No formal action, other than a verbal warning, will be taken against an elected Trade Union representative until the full circumstances of the case have been reported to a full-time official of the union concerned.

Rights of Appeal

Employees have the right to appeal against the issue of a warning and against dismissal. Appeals must be made in writing to the relevant Director within seven working days on receipt of the warning or notification of termination of employment. Appeals against warnings issued by Section Managers will be heard by the relevant Director, who will confirm their decision in writing to the appellant within seven working days.

Appeals against warnings issued by the Chief Executive or against dismissal will be heard by the Authority's Appeals Committee in accordance with the Appeals Procedure (Local Conditions of Service Section 12).

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CAPABILITY PROCEDURE

PRELIMINARY STAGE - INFORMAL INTERVIEW

As soon as a performance problem appears to have arisen, the Section Manager will carry out a preliminary investigation to clearly establish that the employee is not producing the required standard of work and to determine whether the standard expected is reasonably attainable. Then, if appropriate, the Section Manager will interview the employee informally, in private. If the issue relates to sickness absence the Section Manager will determine if an informal meeting is required following a return to work if triggers have been hit.

Although this is an informal interview, the employee may prefer to be supported by a colleague (who may be a Trade Union representative), in which case the Business Services Manager will also attend. **At least one day's verbal notice** of the interview will be given to enable any arrangements to be made.

During the informal interview, the emphasis will be on finding out why the employee's work/attendance is not up to standard and determining what support is required to help him or her to improve it. If it emerges that the employee's performance/attendance is being affected by personal problems, the Section Manager will, if appropriate, explore ways of helping the employee resolve them. If it emerges that the employee's performance/attendance is being affected by ill-health, medical advice will be taken, as appropriate.

The purpose of the informal interview is to: -

- ensure that the employee understands the standard of performance/attendance expected of him or her.
- highlight areas where the employee's standard of work/attendance is giving cause for concern.
- explore with the employee the reasons for the performance/attendance problem to find ways to resolve it.
- make clear the improvement expected.
- seek a commitment from the employee to improve their performance/attendance and agree appropriate support to enable this to happen.
- set a period for review during which performance/attendance will continue to be monitored and the required improvement will be expected to take place.
- tell the employee that the formal Capability Procedure will be followed if the required improvement does not take place.

The Section Manager will issue the employee with a letter confirming that the informal interview has taken place, the reasons for it, the action to be taken and the review period set, if applicable. The letter will also specify what will happen next under the Capability Procedure if the employee's performance/attendance does not improve. A copy will be kept on the employee's personal file for information.

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In many cases an initial, informal interview and follow-up support will prove sufficient to remedy a performance/attendance problem, whereupon the Section Manager should immediately inform the employee that a satisfactory level of performance/attendance has been achieved and is being sustained. The progress made should be reinforced by further encouragement in the interview held at the end of the review period.

STAGE 1 - FORMAL INTERVIEW

Where, after the agreed review period, it becomes clear that no, or insufficient, improvement in performance/attendance has been achieved, the employee will be interviewed formally by their Section Manager, in the presence of the Business Services Manager.

The employee will be given written notice of the interview and the reasons why it has been called under the Capability Procedure. They will be advised of the right to be accompanied and represented by a Trade Union representative or colleague and of the right to ask individuals to provide information in support of their position, which must be notified to the Section Manager in advance of the interview.

If it emerges during the formal interview that the employee's performance/attendance is being affected by personal problems, the Section Manager will, if appropriate, explore ways of helping the employee resolve them. If it emerges that the employee's performance/attendance is being affected by ill-health, medical advice will be taken, as appropriate.

The purpose of the interview is to: -

- ensure that the employee understands the standard of performance/attendance expected of him or her.
- highlight those areas where the Section Manager believes that the employee's performance/attendance continues to fall below the required standard.
- explore with the employee the reasons why there has been no, or insufficient, improvement in performance/attendance following the previous interview and the support provided subsequently.
- make clear the improvement expected.
- seek a further commitment from the employee to improve their performance/attendance and consider what further support might be provided to enable this to happen.
- set a period for review during which performance/attendance will continue to be monitored, appropriate support will be provided, and the required improvement will be expected to take place.
- tell the employee what will happen next under the Capability Procedure if the required improvement does not take place.
- if appropriate, consider the possibility of redeployment.

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Verbal Warning Stage 1 Warning

After investigation at the formal interview, **if the circumstances warrant it**, the Section Manager will warn the employee that failure to achieve the required improvement in performance/attendance in the specified review period, or at any time during the 6 month life of the warning, will result in further formal action under the Capability Procedure and might eventually result in dismissal.

Follow-Up

The Section Manager will issue the employee with a letter, recording: -

- the fact that the formal interview has taken place and the reasons for it, including the fact that its aim was to help the employee to produce the expected standard of work/improve attendance.
- a clear statement of the standard of work/sustained attendance required and the improvement expected.
- the key points and commitments made by both parties during the interview.
- any other action determined at the interview.
- the review period set and the arrangements for monitoring the employee's progress.
- if applicable, confirmation that the employee was issued with a warning that failure to achieve the required standard of performance/attendance in the specified review period would result in further formal action under the Capability Procedure and might eventually result in dismissal.
- the type of warning issued and its duration.
- the right of appeal against the warning.

A copy of the letter will be kept on the employee's personal file.

The Section Manager will ensure that the commitments made during the interview to support the employee's efforts to improve their performance/attendance and to monitor and encourage progress are put into effect.

Where the employee subsequently achieves and sustains the required standard of performance/attendance, they will receive confirmation of this in person from the Section Manager. Thereafter, the Section Manager will continue to monitor and review the employee's performance/attendance as appropriate, and until such time as any warning issued has been expunged from the record.

STAGE 2 - FORMAL INTERVIEW

If, following a formal verbal warning and review period, it becomes clear that no, or insufficient, improvement in performance/attendance has been achieved, the employee will be required to attend a further formal interview. The procedure

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outlined above for a Stage 1 interview and its follow-up will apply here. At Stage 2, should a further formal warning be warranted, it will be a first written warning.

First Written Warning - Stage 2 Warning

After investigation at the formal interview, if the circumstances warrant it, the Section Manager will issue a first written warning to the employee that failure to achieve the required improvement in performance/attendance in the specified review period, or at any time during the 12 month life of the warning, will result in further formal action under the Capability Procedure and might eventually result in dismissal.

STAGE 3 - FORMAL INTERVIEW

If, following a first written warning and review period, it becomes clear that no, or insufficient, improvement in performance/attendance has been achieved, the employee will be required to attend a further formal interview. The procedure outlined above for a Stage 1 interview and its follow-up will apply here. At Stage 3, should a further formal warning be warranted, it will be a final written warning.

Final Written Warning – Stage 3 Warning

After investigation at the formal interview, if the circumstances warrant it, the Section Manager will issue a final written warning to the employee that failure to achieve the required standard of performance/attendance in the specified review period, or at any time during the 2 year life of the warning, will be liable to lead to termination of employment on grounds of incapability. The Section Manager will also advise the employee that if no further formal action is found to be necessary within 12 months of the final written warning being issued, it will be reduced to a first written warning.

DISMISSAL FOR INCAPABILITY

If during the life of a final written warning, it becomes clear that no, or insufficient, improvement in performance/attendance has been achieved, the employee will be given written notice that they are required to attend a further formal interview to be conducted by the Chief Executive, or their representative. The Section Manager responsible for the employee will be required to attend the interview. The Business Services Manager will also be present.

The letter will: -

- advise the employee of the right to be accompanied and represented at the interview by a Trade Union representative or colleague.
- highlight those areas where it is held that the employee's performance/attendance continues to fall below the required standard.
- state that the purpose of the interview is to consider the employee's representations in the face of the possibility of dismissal on grounds of incapability

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following their failure to demonstrate the required improvement in performance/attendance during the life of a final written caution.

If, having heard the employee's representations and the Section Manager's case at the interview and having determined that redeployment (see page 2) is not a viable alternative, the Chief Executive, or their representative, believes that the employee's continued failure to produce the required standard of performance/attendance gives sufficient reason for dismissal, they will dismiss the employee for reasons of incapability.

The decision will be confirmed in writing. The letter will include the grounds for dismissal; the appropriate period of notice; the option to take pay in lieu of notice; details of any payment due; and the employee's right of appeal to the Authority against the decision.

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