

CAPABILITY POLICY

1.0 INTRODUCTION

Monitor endeavours to ensure that its employees deliver an acceptable standard of performance for their role. It is Monitor's aim to use this policy as a means of encouraging employees to improve performance wherever possible and provide help and support to restore and maintain effective contribution. However, poor performance can ultimately result in dismissal.

2.0 PURPOSE

The purpose of this policy is to describe the required standards of performance and the consequences of a failure to deliver to the standards.

It also sets out the procedural steps which Monitor will take in response to performance which falls short of those standards. They are designed to ensure fair and consistent treatment of staff.

The policy has been developed with regard to the statutory ACAS Code of Practice for Disciplinary and Grievance Procedures April 2009. Monitor intends to follow the accompanying detailed booklet: 'Discipline and grievances at work: the ACAS guide', wherever appropriate.

3.0 SCOPE

This policy applies equally to full time and part time employees on a permanent or fixed-term contract.

This policy applies where there is a genuine lack of capability displayed in the work that the employee is asked to deliver (e.g. lack of skill, aptitude, knowledge or ability).

It does not apply to cases of poor attendance or wilful poor performance. In those circumstances the Attendance and Absence Policy and the Discipline Policy will be invoked respectively. Nothing in this policy prevents Monitor from taking action under those policies if considered appropriate. Exceptionally, a very serious failure to meet performance standards (eg negligence which amounts to gross misconduct) may lead to your dismissal without prior warnings and without a notice period under the terms of the Discipline Policy.

This policy does not impact upon the Pay and Grading Framework which is designed to reward good performance over and above the minimum required standard.

This policy does not form part of any employee's contract of employment. Monitor may change it from time to time and may depart from it depending on the circumstances of any case.

4.0 SETTING THE STANDARD

You must deliver your day-to-day work as outlined in your job description and annual objectives in a timely and professional manner and fully meet the standards and competencies for your job role level as set out in the Competency Framework. Poor performance occurs where the quality of work deteriorates below the required standard due to lack of ability, skill or knowledge.

Monitor will aim to ensure that:

- employees understand what is expected of them in terms of performance;
- that performance is monitored via regular supervision meetings with your line manager and via the annual performance management process;
- employees are given appropriate training and support to meet those standards

Employees are not normally dismissed for performance reasons without previous warnings.

5.0 INFORMAL PROCESS

In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management. You are encouraged to have early and open dialogue with your line manager or other senior managers about your performance and any anticipated failures in meeting standards.

Informal discussions may cover the following issues:

- clarification of the required standards;
- identification of areas of concern;
- identification of the likely causes of poor performance;
- any training, coaching or support needed in order to help you meet the required standard; and
- setting a time period for improvement and review.

You may be given a verbal warning by your line manager but this will not be considered to be a formal sanction and they will be disregarded for the purposes of any formal proceedings under this policy. Where informal discussions have not resulted in a satisfactory improvement after a reasonable period of time, Monitor may give you further verbal warnings or may invoke the formal procedure set out below.

If poor performance is due to a domestic, personal or work-related problem, you must explain this to your line manager. These situations will be dealt with sensitively.

6.0 FORMAL CAPABILITY PROCEDURE

The formal procedure will be used for cases of serious under performance or where the informal procedure has not resulted in improvement. There are three stages under the formal procedure. These stages are detailed below.

6.1 Preliminary Steps including Investigations

Monitor will normally investigate to decide if there are grounds for taking formal action. The investigation will depend on the circumstances but may involve reviewing your human resources (HR) file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work. You and other employees involved are expected to co-operate fully with an investigation and will be asked to maintain the confidentiality of any discussions held.

If Monitor considers that there are grounds for taking formal action over alleged poor performance, you will be required to attend a meeting to discuss the matter (Capability Hearing).

You will first be notified in writing of Monitor's concerns, the reasons for those concerns, and the likely outcome Monitor decides, after the Capability Hearing, that your performance has been unsatisfactory.

You will also be provided with the following where appropriate:

- A summary of relevant information gathered as part of any investigation.
- A copy of any relevant documents which will be used at the Capability Hearing.

Any documents which you intend to rely on at the Capability Hearing must be submitted to HR within a reasonable time before the hearing.

Monitor will give you written notice of the date, time and place of the Capability Hearing. The hearing will be held as soon as reasonably practicable, but not before you have had a reasonable amount of time, usually 5 working days, to prepare your case based on the information provided to you.

6.2 Procedure at Capability Hearings

HR will select an employee of appropriate seniority not previously involved in the matter to conduct the Capability Hearing. The Capability Hearing will be attended by a member of HR.

You are entitled to bring a companion to a Capability Hearing (see section 8 below).

If you or your companion cannot attend the Capability Hearing you should inform Monitor immediately and an alternative time can usually be arranged. You must make every effort to attend because a failure to attend without good reason may be treated as misconduct in itself. Alternatively Monitor may have to take a decision based on the available evidence without having met with you.

You may ask relevant witnesses to appear, provided you give Monitor sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.

The aims of a Capability Hearing will usually include:

- Setting out the required standards that Monitor believes you have failed to meet and going through the evidence of this;
- allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations;
- establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement;
- identifying whether there are measures, such as additional training, support or supervision, which may improve performance;
- where appropriate, discussing targets for improvement and a time-scale for review; and
- explaining the consequences of a failure to improve.

A Capability Hearing may be adjourned if Monitor needs to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Monitor will inform you in writing of the decision and the reasons for it usually within 5 working days of the Capability Hearing. Where possible this will also be explained to you in person.

6.3 First Capability Hearing: First Written Warning

If Monitor decides that your performance is unsatisfactory following a first Capability Hearing you will be given a first written warning setting out:

- the areas in which you have not met the required performance standards;
- targets for improvement;
- any measures, such as additional training, support or supervision, which will be provided to you with a view to improving performance;
- the period for review and the system for monitoring your performance; and
- the consequences of failing to improve.

At the expiry of the review period Monitor will write to inform you of the outcome:

- if your line manager is satisfied with your performance, that no immediate further action will be taken; or
- if your line manager is not satisfied that your performance has met the required standard, that the matter will be progressed to a second Capability Hearing; or
- if your line manager feels that there has been a substantial but insufficient improvement, that the review period will be extended.

The warning will be retained permanently on your HR file but will normally only remain active for six months from the end of the review period, after which time it will be disregarded for the purposes of the future actions taken under this policy.

6.4 Second Capability Hearing: Final Written Warning

If your performance has not improved by the date of expiry of the review period set out in a first written warning, or if there is evidence of further poor performance whilst your first written warning is still active, Monitor may decide to hold a second Capability Hearing.

If Monitor decides that your performance is unsatisfactory following the second Capability Hearing, you will be given a final written warning setting out:

- The areas in which you have not met the required performance standards;
- Targets for improvement;
- Any measures, such as additional training, support or supervision, which will be provided to you with a view to improving performance;
- The period for review and the system for monitoring your performance.
- The consequences of failing to improve.

At the expiry of the review period Monitor will write to inform you of the outcome:

- if your line manager is satisfied with your performance, that no immediate further action will be taken; or
- if your line manager is not satisfied that your performance has met the required standard, that the matter will be progressed to a third Capability Hearing; or
- if your line manager feels that there has been a substantial but insufficient improvement, that the review period will be extended.

The warning will be retained permanently on your HR file but will normally only remain active for twelve months from the end of the review period, after which time it will be disregarded for the purposes of the future actions taken under this policy.

6.5 Third Capability Hearing: Dismissal or Other Sanction

If your performance has not improved by the date of expiry of the review period set out in a final written warning, or if there is evidence of further poor performance whilst your final written warning is still active, Monitor may decide to hold a third Capability Hearing.

If Monitor decides that your performance is unsatisfactory following the third Capability Hearing, Monitor may decide to:

- dismiss you;
- demote you; or
- redeploy you into another suitable job.

A decision to dismiss must be approved by the Director of Human Resources and a member of Monitor's Senior Management Team. Dismissal will normally be with full notice or payment in lieu of notice.

A record of a disciplinary sanction, other than dismissal, will be retained permanently on your HR file but will normally only remain active for twelve months from the date of the

sanction after which time it will be disregarded for the purposes of any future actions taken under this policy.

If your performance is still poor whilst the sanction is active, Monitor may decide to re-invoke this procedure at the third Capability Hearing stage.

7.0 Appeals

If you feel that a decision about your performance under this procedure is wrong or unjust you should appeal in writing, stating your grounds of appeal, to HR within 5 working days of the date on which you were informed of the decision.

On receipt of your appeal, you will be asked to attend an appeal hearing and you will be given written notice of the date, time and place. The appeal hearing will normally be held within 5 working days of receipt of your appeal.

If you raise any new matters in your appeal, Monitor may first need to carry out an investigation. You will be given a reasonable opportunity to consider any new information obtained before the appeal hearing takes place.

Where possible, the appeal hearing will be conducted by a manager who has not been previously involved in the case. You may bring a companion with you to the appeal hearing (see section 8 below).

The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision. This will be at Monitor's discretion depending on the circumstances of your case. A hearing may be adjourned if Monitor needs to gather any further information.

Following the appeal hearing Monitor may:

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

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. You will not be permitted to resume working until the matter has been decided. If your appeal is successful you will be reinstated with no loss of continuity or pay.

You will be informed in writing of the final decision as soon as possible, usually within 5 working days of the appeal hearing. Where possible this will also be explained to you in person. The decision on appeal is final and there is no further right of appeal.

8.0 Your Right to be Accompanied

You may be accompanied at any Capability Hearing or an appeal hearing by a work colleague, a trade union representative or an official employed by a trade union.

Your companion is allowed to:

- put forward and summarise your case;
- ask questions of clarification;
- respond to views on your behalf; and
- confer with you.

Your companion does not have the right to answer questions for you or to prevent Monitor from putting forward its case or to address the meeting if you do not wish it.

If you wish to be accompanied you must make a reasonable request to HR in advance of the meeting. Please note that your companion has the right to decline to attend. If they choose to accompany you, they will be allowed reasonable time off from duties without loss of pay.

In some circumstances your choice of companion may not be allowed, for example, if they have a conflict of interest or could prejudice the meeting. In those cases, you may be asked to choose someone else.

It is your responsibility to inform your companion of the date, time and place of the meeting. If your companion is not available at short notice, the meeting may be delayed for a short period. Monitor reserves the right to ask you to choose someone else if the meeting would have to be delayed for over 5 working days because your companion is unavailable.

Monitor may, in its discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family).

QUERIES

Any queries relating to this document should be addressed to the Director of Human Resources and Corporate Affairs.

This policy is for guidance only and does not form part of your contract of employment. It has been in operation since October 2011 and replaces the relevant provisions of the Standards, Attendance and Performance Policy.

DECLARATION:

I have read and understood Monitor’s Capability Policy and agree to abide by its principles.

Signature.....

Date.....

Print Name.....

PLEASE RETURN TO HUMAN RESOURCES

DRAFT