

GUIDANCE NOTES

Capability can manifest itself where:

- i. an employee is efficient whilst at work but fails to give satisfactory performance because of frequent or continuous absences (possibly arising from minor non recurrent ailments¹);
- ii. an employee fails to carry out the duties of their post in a satisfactory manner;
- iii. performance deteriorates so that it no longer adequately meets the required standard for the post;
- iv. during an employee's probationary period it becomes clear that they are unsuitable for continued employment.

POTENTIAL REASONS FOR SUBSTANDARD PERFORMANCE / ATTENDANCE

CHANGES IN THE WORKPLACE

Where unsatisfactory performance/attendance stems from the introduction of new technology, re-organisation or changing patterns of work, the Manager should take appropriate steps, where practicable, to help the employee concerned to acquire any new skills that may be required.

RECENT PROMOTION

Where the employee has been promoted recently and is having difficulty in coping with the duties at the higher grade, they should be assured that appropriate assistance and encouragement will be given through training or other means to enable them to reach an acceptable level of performance within a specified period. However, if this is not possible Stages 1-3 of this Capability Procedure (Sections 7 – 9) should be followed as appropriate.

The Line Manager may need to consider whether a change of duties is desirable or possible, or if circumstances allow for a reversion in grade or redeployment (see 9.4). If alternative

¹ A minor ailment is a less serious medical condition that does not require lab or blood tests. E.g. rashes, coughs, coldsores, hayfever

work is offered and accepted, the new standards of performance should be explained and the employee informed that their performance will be monitored closely.

PERSONAL OR DOMESTIC DIFFICULTIES

The possibility that a personal or domestic difficulty lies at the root of poor performance/attendance should be taken into consideration. Thought should be given to agreeing with the employee the most appropriate course of action to remedy the situation. This might include support from the Staff Welfare Service or Occupational Health Adviser. However if it is not possible to resolve the issue, poor performance/attendance will still be addressed through these Capability Procedures.

ALCOHOL OR DRUG ABUSE

On rare occasions, poor performance/attendance may be attributable to the effects of alcohol or drug abuse and a course of action designed to assist the employee who may be suffering in this way should be adopted. This does not prevent Capability Procedures from being followed. Factors likely to constitute early warning signs include absenteeism, changes in personality, irritability, slurred speech, impaired concentration and memory, deterioration in personal hygiene, anxiety and depression. Managers should seek advice from the Occupational Health Service. It may be appropriate to follow Disciplinary Procedures if an employee wilfully does not follow instructions given by a manager. Alcohol and drug abuse can afflict any employee regardless of status and seniority and the employee concerned should be encouraged to seek help and medical treatment.

The Government's Alcohol and Drug Workplace Policy can be found on the Office of Human Resources website, <http://www.gov.im/hr/hrpolicies.xml>.

PROTECTED CHARACTERISTICS

The procedures must be applied fairly, in accordance with employment law, and avoid unlawfully discriminating directly or indirectly against people with protected characteristics. These are listed at the back of the policy. Managers should seek the advice of OHR if unsure.

The Equality Act requires employers to remove disabling barriers by making reasonable adjustments where it is 'reasonable' to do so. However, it is good practice that support/reasonable adjustments are fully considered for all employees. The requirement to make reasonable adjustments, places the employer under a positive duty to take the initiative and consider what adjustments would be possible and practicable to support a particular employee. Where an existing employee becomes disabled (as defined under the Equality Act), either gradually or suddenly through illness or an accident, the manager should consider what reasonable adjustments could be made to accommodate the employee's needs and facilitate his or her retention.

Where appropriate, managers should consider arranging an OH referral and/or workplace risk assessment for further advice. Additional guidance can also be sought from OHR. The following are examples of reasonable adjustments listed in the Equality Act which may be considered:

- a) making adjustments to premises, e.g. widening doors or installing visible or vibrating fire alarms;
- b) allocating some of the disabled person's duties to someone else;
- c) transferring him/her to fill an existing vacancy (redeployment);
- d) altering her/his working hours;
- e) signing him/her to a different place of work;
- f) allowing disability leave during working hours for assessment, tests, treatment, etc;
- g) giving or arranging training (on or off the job);
- h) acquiring or modifying equipment;
- i) modifying instructions, procedures, etc;
- j) providing a reader, interpreter, etc;
- k) provision of additional supervision, support or training.

The list is not exhaustive and adjustments could include other changes to the workplace and patterns of work.

PROCEDURE FOR THE CONDUCT OF FORMAL STAGE 3 CAPABILITY HEARINGS

INTRODUCTION

The Panel / Senior Manager hearing the case should introduce themselves to those present and explain the purpose of the meeting and how it will be conducted. A note taker and a HR representative may be present.

LINE MANAGER'S CASE

An opening statement may be made as part of the presentation of the case.

The employee and/or their companion (who may be a work colleague or staff association/trade union representative) will have the opportunity to ask questions of the manager. The person accompanying the employee has a statutory right to address the hearing but no right to answer questions on the employee's behalf. They should be allowed to address the hearing in order to:-

- present the employee's case;
- sum up the employee's case;
- respond on the employee's behalf to any view expressed at the hearing; and
- confer with the employee during the hearing.

The person accompanying the employee may not address the hearing if the employee does not wish it and must not prevent other parties from presenting their case.

The Panel / Senior Manager hearing the case may also ask questions.

EMPLOYEE'S CASE

The employee or their companion should present their case. The Panel / Senior Manager may ask questions of the employee or their work colleague or staff association/trade union representative.

The line manager may question the employee or their representative

SUMMARY

Both the Line Manager and the employee or their work colleague or staff association/trade union representative may make final statements summing up their cases if they wish.

ADJOURNMENT

The Line Manager, the employee or their work colleague or staff association/trade union representative may request an adjournment of the hearing at any stage.

CONSIDERATION OF THE CASE

The Panel / Senior Manager will adjourn the hearing and request the Line Manager, the employee and their work colleague or staff association/trade union representative to withdraw to allow the panel / Senior Manager to consider all the evidence.

The Panel / Senior Manager will deliberate in private. The note taker and any HR Adviser may remain present but will not be part of the decision making process. The HR Adviser can advise on procedural matters if required. If it is necessary to recall either party in order to resolve points of uncertainty on the information given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

DECISION

Once the decision has been made the hearing should be reconvened and the employee should be advised of the decision, the course of action to be taken and the right of appeal. For the courses of action which may be taken refer to section 9.6 The decision will be confirmed to the employee in writing within 5 working days of the hearing.

If the decision taken by the Panel / Senior Manager is that the employee should be given a further period of time in which to improve their attendance or performance, the Capability Action plan needs to be updated to reflect the revised targets.

APPEALS

APPEALS OTHER THAN DISMISSAL

Model procedures for use at Appeal Hearings other than dismissal, are provided within the PSC Civil Service Regulations (at [Annex B3](#)) and the PSC Manual and Craft Workers MOA (at [Appendix 7 \(I\)](#)). The order in which the Appeal is heard is reversed, with the Appellant presenting their case first.

At the Appeal Hearing particular attention should be paid to any new information that was not available earlier and the parties should be given the opportunity to comment on it. It may be appropriate in some cases for the hearing to be adjourned to allow for such information to be investigated or for the matter to be referred back to the manager against whose decision the appeal has been lodged.

APPEALS AGAINST DISMISSAL

If the decision of the Panel is that the employee should be dismissed, they have the right of Appeal.

The Appeal Hearing should be heard by an Independent Panel consisting of a:

- Chair, who will be a member of the Public Services Commission or an Accounting Officer(of another Department)
- Management Representative , who holds a management role within Isle of Man Government
- Independent Representative, being a person occupying any role within Isle of Man Government(in order to provide an independent prospective)

An HR Advisor (to advise all parties) and a note taker will also be present on procedural issues. At the Appeal Hearing, particular attention should be paid to any new information that was not available earlier and the parties should be given the opportunity to comment on it. It may be appropriate in some cases for the hearing to be adjourned to allow for such information to be investigated or for the matter to be referred back to the manager against whose decision the appeal has been lodged.