

# Capability Policy

VERSION: JULY 2020

## 1. THE POLICY

- 1.1 The policy set out below is designed to ensure that employees whose work performance is viewed as unsatisfactory are dealt with fairly and consistently, with the prime objective of improving performance to the required level. This policy applies to poor performance/capability (lack of 'skill') and if there is an issue with conduct (lack of 'will'), please refer to the Disciplinary Policy.
- 1.2 It is intended that managers use the 'Improving Performance Guidelines' to try to address issues of poor performance informally prior to invoking the formal procedures contained within this Policy.
- 1.3 This policy and the procedure set out is intended only as a statement of Diocese policy and management guidance, and it does not form part of your contract of employment or otherwise have any contractual effect.

## 2. SCOPE & DEFINITIONS

- 2.1 For the purpose of this policy, incapability is defined as 'failing in a significant or persistent way to carry out work or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience.'
- 2.2 The steps within the procedure below will enable the employee and their manager to identify the specific failings, and to take steps to improve performance. In the event the required improvements in performance don't happen or are not sustained, employment may be terminated on the grounds of incapability.
- 2.3 The scope of this policy is limited to reasons for incapability as set out in 2.1 above. Where unsatisfactory work performance arises through persistent sickness absence, or in cases of long-term sickness, this should be managed in accordance with the relevant sections of the Sickness Absence Policy.
- 2.4 Similarly, the scope of this policy and its application is designed to apply to cases where an employee is unable, rather than unwilling, to work to the required standards of performance. Misconduct, or poor attitude/behaviour and related issues will be addressed via the Disciplinary Policy and procedure.

## 3. AIMS & PRINCIPLES

- 3.1 As an organisation, we want everyone to succeed in their work, as we recognise individual success is crucial to the success of the Diocese. In order to do so, we:

- Take care to match an individual's skills and experience to job requirements in the recruitment process.
  - Provide written job descriptions and/or clear objectives.
  - Support staff by providing appropriate training and development opportunities.
- 3.2 Unfortunately, on some occasions, we find that individuals are not performing at the particular standards required. In such cases, the manager will apply this policy and procedure to support the individual to try to address the matter and reach the standards of performance required.
- 3.3 Should an individual wish to apply for an alternative internal job vacancy whilst subject to a capability caution, they will be eligible to do so. However, it should be noted that the background and reasons for the capability caution may be confidentially shared with the prospective new manager. This is to ensure any job offer is made with as full an understanding of the individual's skills and experience, as well as any development needs, as possible.

#### **4. PRIOR TO COMMENCING THE FORMAL CAPABILITY PROCEDURE**

- 4.1 There is an underlying assumption that the employee has the relevant experience and/or training for the tasks they are employed to carry out.
- 4.2 Before the formal Capability Procedure is initiated, four conditions must normally be fulfilled:
- The standard of performance the employee is expected to achieve is clearly defined.
  - The employee is assessed to be falling short of these standards.
  - An informal performance hearing has been held, and an Action Plan agreed with the employee to address this shortfall (the 'Performance Gap') the action plan template can be found in the [appendix](#) of this policy.
  - At the review stage, the employee is found not to have achieved the required standards (or subsequently their performance has lapsed to an unsatisfactory standard).
- 4.3 However, in the event of poor performance of a more serious nature (such as where health & safety is at risk, or significant costs or other liabilities are involved) it is possible to immediately commence the formal procedure as outlined in this document. However, it should be remembered that the primary objective is to support an individual to achieve the standards required.
- 4.4 Managers should refer to the Improving Performance Managers' Guidelines for detailed advice and guidance.

#### **5. OPERATION OF THE CAPABILITY PROCEDURE**

- 5.1 All capability matters will be brought to the attention of the employee promptly.
- 5.2 The capability procedure will be applied fairly and consistently to all employees.
- 5.3 In some cases where poor performance has serious impact or implications, it may be appropriate to suspend. Suspension prior to a Capability hearing is not intended as a form of

disciplinary action, but may be taken in order for the Diocese to establish the facts prior to determining whether action is justified.

- 5.4 No employee will be dismissed for poor performance due to incapability without being first provided with reasonable opportunity to address the issues.
- 5.5 All employees have the right of appeal against a decision taken at any each stage of the procedure, as long as they observe the time limits set out in this policy.
- 5.6 At every stage of these procedures, managers will consult with HR at Bishops House, Hove, to ensure that any action taken is fair, legal and consistent.
- 5.7 A copy of this policy will be accessible to all employees, via their line manager on the Diocese intranet site and the HR Department at Bishop's House, Hove.
- 5.8 Training will be given to managers responsible for implementing this policy.
- 5.9 The Diocese will support employees as much as is reasonably possible in order to affect development and change, and will honour the outcomes and recommendations (in the form of additional training or support etc.) from any Capability Hearings that take place.
- 5.10 An individual will be provided with at least 48 hours written notice prior to attending a Capability hearing. Prior to attending, the individual will be clearly advised of the particular aspects of their work, which are viewed as unsatisfactory. Where written evidence of this is available, a copy of such evidence will also be provided.
- 5.11 The employee may be accompanied at the Capability hearing, should they wish, by a work colleague or Trade Union representative. It is the employee's responsibility to secure the attendance of their representative, and the colleague has the right to decline to attend. As far as is reasonably practical, the hearing will be held at a mutually convenient date. In the event the representative is not available to attend the hearing on the date proposed by the Diocese, then it may be postponed to an alternative date, provided this is within 5 days.
- 5.12 Every opportunity will be given to an employee to state their case and submit mitigating circumstances or other relevant material at their hearing.
- 5.13 We will make every effort to communicate this policy, in launching it as well as in implementation, to employees with disabilities and to those who have English as a second language.
- 5.14 The Diocese will ensure that any capability procedures are free of discriminatory practice or assumptions being made about the employee, in line with current legal obligations and our Equal Opportunities & Diversity Policy.
- 5.15 All proceedings, statements and records relating to Capability procedures will be kept strictly confidential.
- 5.16 All actions (Cautions) issued will be confirmed in writing.

## **6. STAGES OF THE FORMAL PROCEDURE**

- 6.1 Minor irregularities in performance, falling within the scope of this policy, will be dealt with informally in the first instance (please refer back to section 4), but where the matter is more serious (or persistent), the formal procedure detailed below will normally be used.

6.2 There are 3 stages to the formal procedure. The Diocese reserves the right to initiate the procedure at any stage (including dismissal), depending on the circumstances of the issue.

### **6.3 Formal Procedure, Stage 1 – WRITTEN CAUTION**

In the event of unsatisfactory performance, which persists after the informal procedure, or where a first instance of unsatisfactory performance is sufficiently serious to warrant formal action (e.g. where health & safety is at risk, or significant costs or other liabilities are involved), the individual will be invited to a formal hearing to discuss the matter.

At this meeting the individual will have the opportunity to explain their unsatisfactory performance. They will be reminded of the earlier informal discussions and the steps taken to support an improvement in their performance (if applicable).

If, having heard any explanations offered by the member of staff, the manager remains dissatisfied, a WRITTEN CAUTION will be given for unsatisfactory performance. This will be confirmed in writing to the individual.

At this meeting further consideration will be given to any additional training or support that could be reasonably provided to the individual to enable them to reach the required standard of performance. Where appropriate, the Capability Hearing – Action Plan will be completed. (See [Appendix 1](#))

A reasonable time period will be set within which improvement is expected, and a further meeting will be arranged at the end of this period to review the situation. Due to the varying nature of performance issues, it is difficult to provide definitive guidance.

Obviously the time allowed for an individual to master a complex task (or to develop ‘soft-skills’) will be greater than that provided for in cases where the task is routine and repetitive in nature. Generally however, it would be unusual for the review timescale to be less than 2 working weeks or greater than 3 months. Seek advice from HR if needed.

The written caution will be placed on the individual’s file for a period of 12 months. If the individual reaches the required standards of performance by the date set for the review, and maintains this satisfactory standard of performance throughout the remainder of the period, the written caution will be removed from the individual’s record at the end of the 12 months period.

## 6.4 Stage 2 – FINAL WRITTEN CAUTION

If there is continued unsatisfactory performance, or where a first instance of unsatisfactory performance is sufficiently serious to warrant formal action (e.g. where health & safety is at risk, or significant costs or other liabilities are involved), the individual will be invited to a formal hearing to discuss the matter. At this meeting the individual will have the opportunity to explain their unsatisfactory performance. They will be reminded of the earlier discussions and the steps taken to support an improvement in their performance. The reasons for the continued concern of their manager will be explained as precisely as possible.

If, having heard any explanations offered by the member of staff, the manager remains dissatisfied, a FINAL WRITTEN CAUTION will be given for unsatisfactory performance. This will be confirmed in writing to the individual.

At this meeting further consideration will be given to any additional training or support that could be reasonably provided to the individual to enable them to reach the required standard of performance. Where appropriate, the Capability Hearing – Action Plan will be completed. (See [Appendix 1](#))

A reasonable time period (see comment in 6.3 above), will be set within which improvement is expected, and a further meeting will be arranged at the end of this period to review the situation.

The final written caution will be placed on the individual's file for a period of 12 months. If the individual reaches the required standards of performance by the date set for the review, and maintains this satisfactory standard of performance throughout the remainder of the period, the final written caution will be removed from the individual's record at the end of the 12 months period.

## 6.5 Stage 3 – DISMISSAL

If there has been insufficient improvement in performance within the timescale set, or the performance standards lapse to an unsatisfactory level after an initial improvement within the remainder of the final caution period, a further formal hearing will be held with the individual.

At this hearing the manager will review the history of the case, including the steps that have been taken to support the individual to achieve the required level of performance.

The individual's explanation will be heard, and considered prior to the manager reaching a decision on the action to be taken.

The action may be:

- To dismiss the employee on the grounds of poor performance due to incapability, or
- if a suitable job vacancy exists, and the employee wishes to accept the new role, to demote or to transfer the employee into an alternative job. (It is important that both the manager and the employee believe this new role will fit the skills and capability of the employee). Or,
- In exceptional cases, to extend the final caution, to allow further time to reach and maintain the required standards of performance. This option should only be considered when there is sufficient evidence to persuade the manager that the employee will reach the required standards within a reasonable period, which is unlikely to be longer than three months.

The manager will confirm this decision in writing. In the event of dismissal, the termination will be with full notice (which may be paid in lieu at the discretion of the manager).

## **7. OTHER SANCTIONS**

- 7.1 In addition to or in place of Cautions, the Diocese may impose other sanctions in cases of poor performance. Examples include (but are not limited to) demotion, transfer, loss of seniority, loss of salary increment or review, suspension with or without pay.

## **8. APPEALS**

- 8.1 If the employee wishes to appeal against a decision taken, the employee should inform the HR department, or nominated manager, in writing within 7 calendar days of the notification of the capability decision (poor performance caution). Appeals will be dealt with, as soon as practical, by the Diocese, and wherever possible they will be heard within 14 calendar days of the appeal notification being received.
- 8.2 Where possible, the appeal will be heard by a more senior level of management in the Diocese than that taking the capability action.
- 8.3 At the appeal, employees will have a full opportunity to state their case and to comment on any new evidence. Following an adjournment, they will be informed of the decision, which will be final. In some cases, where the adjournment is extended for some reason, it may be necessary to be informed in writing rather than by reconvening the parties.
- 8.4 The Diocese will confirm in writing the results of the appeal and outline the reasons for the decision reached. If the appeal decision upholds a decision to dismiss, the date of termination will take effect from the date on which the original dismissal was notified to the employee.

## **9. RECORDING INFORMATION**

- 9.1 Records of any incapability proceedings, evidence involved, mitigating circumstances and decisions, will be kept confidentially and in accordance with GDPR 2018.

## **10. FURTHER READING/REFERENCE**

- 10.1 Further guidance and advice, which may be of assistance, can be found in the following Diocese policies:
- Disciplinary policy and procedure
  - Disability policy
  - Drugs & Alcohol
  - Appraisal process (setting clear objectives & measuring/monitoring performance)
  - Recruitment policy (job descriptions & person specifications)
  - [Appendix 1](#) – Capability Hearing – Performance Action Plan

## **Approval**

This policy was approved by the Diocesan Board of Trustees on:  
The next review is due by:

8 July 2020  
31 July 2022

## Appendix 1: Performance Action Plan

Name:

Job Title & location:

Date objectives set:

Date for review:

Name of person conducting review:

Details of Key Objectives to be achieved (be specific & ensure measurable):

Timescale to be achieved by:

- 1.
- 2.
- 3.
- 4.

Details of support measures to be provided:

Timescale/who is responsible:

- 1.
- 2.
- 3.
- 4.

Additional Comments:

Signed (Manager) ..... Date.....

Signed (Employee) ..... Date.....