*\*\*BLUE TEXT SHOULD BE REMOVED BEFORE ISSUE\*\**

***Capability procedure***

*Dealing with an employee’s poor performance can be particularly difficult where you know they are simply incapable of fulfilling the tasks and duties expected of them in their role, so they aren’t really to blame. The capability procedure ensures you deal with the problem both fairly and sympathetically.*

The primary aim of this procedure is to provide a framework within which the Company can work with employees to maintain satisfactory performance standards and to encourage improved performance where necessary. The Company recognises the difference between a deliberate or careless failure on the part of an employee to perform to the standards of which they are capable (in which case the Company will use the disciplinary procedure) and a case of incapability, where the employee is lacking in knowledge, skill or ability and so cannot perform to the standard required (in which case the Company will use this capability procedure in an attempt to improve the employee’s performance). This procedure does not apply to cases involving misconduct or genuine but persistent short-term sickness absence; in those cases, the Company will use the disciplinary procedure or attendance procedure respectively.

The Company also recognises that, during an employee’s employment, capability to carry out their duties may deteriorate. This can be for a number of reasons; the most common ones being that either the job changes over a period of time and the employee fails to keep pace with the changes or the employee changes and can no longer cope with the work.

This capability procedure is entirely non-contractual and does not form part of an employee’s contract of employment and may be amended at any time. The Company may also vary this capability procedure as appropriate in any case.

Minor capability issues will be dealt with informally in the first instance through counselling and training. Informal discussions may be held between the employee and their line manager with a view to clarifying the required work standards and the level of performance expected of the employee, identifying areas of concern, establishing the likely causes of poor performance, identifying any training or supervision needs, setting targets for improvement and agreeing a timescale for review. However, in cases where informal discussion with the employee does not lead to a satisfactory improvement in performance, or where the performance issues are more serious, the following capability procedure will be used. At all stages of the procedure, an investigation and assessment will be carried out in order for the Company to establish a fair and balanced view of the facts relating to the employee’s performance issues, before deciding whether to proceed with a performance review meeting. Employees must co-operate fully and promptly in any investigation and assessment. This will include disclosing any relevant documents and attending investigatory meetings if required.

At all stages the Company will give consideration to whether the unsatisfactory performance is related to a disability and, if so, whether there are any reasonable adjustments that could be made to the requirements of the employee’s job or other aspects of the working arrangements, including changing their job duties or providing additional equipment or training. The Company may also consider making adjustments to this capability procedure in appropriate cases. If any employee wishes to discuss this or to inform the Company of any disability or medical condition that they consider relevant, they should contact their line manager.

Following any investigation and assessment, if the Company considers there are grounds for formal performance management, it will notify the employee in writing of the concerns over alleged poor performance and will invite them to a performance review meeting to discuss the matter, setting out the date, time and location of that meeting. The Company will provide sufficient information about the alleged poor performance and its possible consequences to enable the employee to prepare to answer the case. This will include the provision of copies of relevant documentary evidence and witness statements where appropriate. The employee will normally be told the names of any witnesses whose evidence is relevant to their performance review meeting, unless the Company believes that the identity of a particular witness should remain confidential, in which case as much information as possible will be provided while maintaining confidentiality. All employees must also treat as confidential any information or evidence communicated to them in connection with an investigation or performance management matter.

Having given the employee reasonable time to prepare their case, a formal performance review meeting will then take place at which they will be given the chance to state their case, accompanied if requested by a trade union official or representative or a fellow employee of their choice. The meeting will be chaired by a manager, who will normally be the employee’s line manager but may be an alternative manager, and it will also be attended by someone whose role is to take an attendance note of the meeting. The employee’s chosen companion will be permitted both to address the meeting and to confer with the employee during the meeting, but they will not be permitted to answer questions on the employee’s behalf. They are also not entitled to address the meeting against the employee’s wishes or to act in a way that prevents anyone from contributing to the meeting. The employee must inform the chair of the meeting of the identity of their chosen companion in good time in advance of the meeting. If the employee’s chosen companion is unavailable at the time the meeting is scheduled and will not be available for more than five working days after that time, the Company may require the employee to choose someone else. The Company may, at its absolute discretion, allow the employee to bring a companion who is not a trade union official or representative or a fellow employee where this will help them overcome a particular difficulty caused by a disability or where they have difficulty understanding English. Individuals are not obliged to act as companions if they do not wish to do so.

If the Company also intends to call relevant witnesses to appear at the performance review meeting, they will notify the employee in advance. Likewise, if the employee wants to call any relevant witnesses to appear at the meeting, they must notify the chair of the meeting in good time in advance of the meeting. The employee will be given the opportunity to respond to any information provided by any witnesses.

The employee must make every effort to attend the meeting. If they or their companion cannot attend, they must inform the chair of the meeting immediately so that an alternative date and time can be scheduled. If the employee fails to attend the meeting without good reason, or is persistently unable to do so, this could result in the meeting being held in their absence and then the Company may have to take a decision based on the available evidence (including any written representations that the employee may have made).

Although the Company will endeavour to hold a face-to-face performance review meeting with the employee in ordinary circumstances, the Company reserves the right at its absolute discretion to hold the meeting (and any appeal meeting) remotely in exceptional circumstances, for example, in the case of a pandemic virus.

The purposes of the performance review meeting include: to set out the required standards that the Company considers the employee has not met, to allow the employee the opportunity to explain the poor performance, respond to the evidence, make representations and ask any relevant questions, and to establish the likely causes of poor performance (including any reasons why any measures taken so far have not led to the required improvement). Except in the case where dismissal is proposed, the purposes of the performance review meeting also include: to discuss measures, such as additional training or supervision, which may improve the employee’s performance, to set targets for improvement and to set a reasonable timescale for review (reflecting the circumstances of the case).

In a case where dismissal is proposed, the purposes of the performance review meeting also include: to establish whether there are any further steps that could reasonably be taken to rectify the employee’s poor performance, to establish whether there is any reasonable likelihood of the required standards of performance being met within a reasonable time and to discuss whether there is any practical alternative to dismissal, such as redeployment, with the employee’s agreement, to another available job at the same or lower grade which is more suited to their abilities.

Please note that it is prohibited for employees to record (whether covertly or otherwise) the proceedings at the performance review meeting, and at any appeal meeting, without the express permission of the Company. If the Company discovers that the employee has done this covertly, they could be subject to disciplinary action. Depending on the circumstances, it may amount to gross misconduct and could result in the employee’s summary dismissal.

Following the performance review meeting, the Company will decide whether or not formal performance action is justified and, if so, the employee will be informed in writing of the Company’s decision in accordance with the stages set out below and notified of their right to appeal against that decision. An employee will not normally be dismissed for performance reasons without previous warnings, unless the Company decides that it amounts to gross negligence. In that case, summary dismissal without previous warnings may be appropriate. The Company reserves the right to dismiss for gross negligence without notice of termination or payment in lieu of notice.

**Stage 1: Performance warning**

The employee will be given a first formal PERFORMANCE WARNING. This will set out the areas in which the employee has not met the required performance standards, targets for improvement, any measures, such as additional training or supervision, which will be taken with a view to improving the employee’s performance, a timescale for review and the likely consequences of failing to improve to the required standards within the review period. The performance warning will be recorded but nullified after six months, subject to satisfactory performance.

The employee’s performance will be monitored and, at the end of the review period, the Company will write to the employee to advise them of the next step. If the Company is satisfied with the employee’s performance, no further action will be taken. If the Company is not satisfied with the employee’s performance, the matter may be progressed to Stage 2 or, if the Company feels that there has been a substantial but insufficient improvement, the review period may be extended.

**Stage 2: Final performance warning**

Failure to sufficiently improve performance within the review period, or further poor performance while a performance warning is still active, or a first instance of serious poor performance, will result in a FINAL PERFORMANCE WARNING being issued. This will set out the areas in which the employee has still not met the required performance standards, targets for improvement, any further measures, such as additional training or supervision, which will be taken with a view to improving the employee’s performance, a further timescale for review and the likely consequences of failing to improve to the required standards within the further review period, i.e. that dismissal will probably result. The final performance warning will be recorded but nullified after twelve months, subject to satisfactory performance.

The employee’s performance will again be monitored and, at the end of the further review period, the Company will write to the employee to advise them of the next step. If the Company is satisfied with the employee’s performance, no further action will be taken. If the Company is not satisfied with the employee’s performance, the matter may be progressed to Stage 3 or, if the Company feels that there has been a substantial but insufficient improvement, the review period may be extended.

**Stage 3: Dismissal**

Failure to sufficiently improve performance within the further review period, or further poor performance while a final performance warning is still active, will normally lead to DISMISSAL, with appropriate notice. The Company may first consider redeploying the employee, with their agreement, to another available job at the same or lower grade which is more suited to their abilities. A dismissal decision will only be made after the fullest possible investigation. Dismissal can be authorised only by a senior manager or a Director. The employee will be informed of the reasons for dismissal, the appropriate period of notice, the date on which their employment will terminate and how they can appeal against the dismissal decision.

**Appeals**

An employee may appeal against any decision under this capability procedure, including dismissal, to a Director of the Company. Appeals must be submitted within five working days starting with the day after the date on which the employee received the written decision. Appeals should be made in writing and state the full grounds for appeal. The employee will then be invited in writing to attend an appeal meeting chaired by a senior manager, a Director or an independent chairperson appointed by the Company, and this will set out the date, time and location of that meeting. The appeal meeting will also be attended by someone whose role is to take an attendance note of the meeting, and the manager who conducted the performance review meeting may additionally be present.

At the appeal meeting, the employee will again be given the chance to state their case and will have the right to be accompanied by a trade union official or representative or a fellow employee of their choice.

Following the meeting, the employee will be informed in writing of the appeal decision. The Company may confirm the original decision, revoke the original decision or substitute a different penalty. The Company’s decision on an appeal will be final and there is no further right of appeal.

If the appeal is against dismissal, the date that any dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful, the decision to dismiss will be removed and the employee will be reinstated with no loss of continuity or pay.

**Employees with short service and other workers**

This capability procedure does not apply to any employee who has been employed by the Company for less than two years.

This capability procedure also does not apply to workers, agency workers, consultants or contractors.