

# Capability Procedure

(TCE046 FEB18)

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## 1. Purpose and scope

The Crown Estate aims to ensure that employees achieve and maintain a high standard of performance in their work. To this end managers will establish standards and monitor performance, and provide employees with appropriate training and support to meet those standards. The purpose of the Capability Procedure (the “Procedure”) is to provide a framework within which managers can work with employees to achieve and maintain satisfactory performance standards and to encourage improvement where necessary.

If employees do not maintain the performance standards required, whilst reasonable assistance will be given, action under this Procedure may become necessary. If a warning is issued, it will be with the purpose of ensuring that employees understand the standards of performance the business expects, to allow employees an opportunity to improve and to advise the employee of the possible outcome if there is insufficient improvement in performance.

The Crown Estate’s aim is to ensure consistent and fair treatment for all of its employees.

The Capability Procedure applies to all employees who have passed their probationary period regardless of their length of service. It does not apply to agency workers or self-employed contractors.

The Procedure does not form part of your Contract of Employment and The Crown Estate reserves the right to amend the Procedure from time to time.

## 2. Principles

- It is The Crown Estate's policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the chance to respond at a meeting before any formal action is taken.
- For all formal reviews you will be advised in writing of the nature of the concerns about your performance and the arrangements for a review meeting. Copies of any documents that will be produced at the meeting will be provided to you prior to the meeting.
- Each step and action under the Procedure will be taken without unreasonable delay.
- If you have difficulty at any stage of the Procedure because of a disability, you should discuss the situation with your HR Advisor (HRA) or HR Business Partner (HRBP) as soon as possible.
- If the facts suggest that it is more appropriate to deal with the matter under a different procedure i.e. the Disciplinary Procedure or Sickness Absence Procedure your HRA or HRBP will advise. In such cases the business reserves the right to implement the Procedure at any stage as appropriate in the circumstances.
- You will have the right to be accompanied to any formal capability or appeal meeting by a work colleague or a trade union official. If you wish to exercise your right to be accompanied, you should inform the HRA or HRBP as soon as practicable of the identity of your proposed companion. Although your nominated companion will be able to address the meeting and confer with you, s/he will not be permitted to answer questions on your behalf.
- Your nominated companion must make every effort to attend the capability and/or appeal meeting. If your companion is unable to attend the meeting, you should inform your HRA or HRBP as soon as possible. If your companion is not available on the day/time the meeting is scheduled for, you may propose an alternative time within 5 working days of the original scheduled date.
- We may, at our discretion, allow you to bring a companion who is not a colleague or trade union official where this will help overcome a particular difficulty based by on a disability, or where you have difficulty communicating.
- You, and anyone accompanying you, may make written notes but must not make electronic recordings of any meetings or meeting conducted under the Procedure. The business will record

any action taken under this Procedure. This information will be retained on your personnel file. Any warnings given under the Procedure will typically be "live"<sup>1</sup> for a period of 12 months. At the end of that period, subject to your improved performance, the warning will normally be disregarded for the purposes of this Procedure but will remain permanently on your personnel record. However, the business reserves the right to issue warnings for a longer period and to take prior warnings into account when dealing with subsequent allegations of poor performance even when the stated duration of a warning(s) has expired.

- Written warnings will set out the nature of the performance issues, the improvements required, the timescale for improvements to be achieved within, the period for which the warning will remain "live", and the likely consequences of further performance issues in that "live" period.
- Please note that The Crown Estate reserves the right in its absolute sole discretion to extend the period of time in which the warning is "live" to reflect any period of time for which you are absent from work (not including annual leave) whilst the warning is "live".
- In serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warning may be appropriate.
- You will be given the opportunity to appeal against any formal action taken under this Procedure. Our aim is to deal with performance matters sensitively and with due respect of the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this Procedure.

### 3. Procedure

If your manager considers your level of performance to be unacceptable, your manager will hold an informal discussion with you to explain the shortfall between your performance and the required standard, and to try to establish the reason or reasons for performance below the required level. Where appropriate a note of any such informal discussions may be placed on your personnel file but will not be treated as a formal written warning.

If we are unable to resolve your performance issues informally, we will undertake an assessment to decide if there are grounds for taking formal action under this Procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including scorecard records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

### 4. Disability

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.

If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact your manager, HRA or your HRBP.

### 5. Notification of a capability meeting

If we consider that there are grounds to taking formal action over alleged poor performance, you will be required to attend a capability meeting. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the meeting that your performance has been unsatisfactory. We will include 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 meeting;

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<sup>1</sup> "Live" means period of time the warning will be taken into consideration under this Procedure

- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality;
- a copy of this Procedure

We will give you written notice of the date, time and place of the capability meeting. The meeting will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually at least 2 working days', to prepare for the meeting.

You should make every effort to attend the meeting. If you are unable to attend the meeting, you should inform your HRA or HRBP as soon as possible. The meeting will usually be moved to another day and you will be normally be given at least 2 working days' notice of the rearranged meeting.

If however you are persistently unable or unwilling to attend a capability meeting without good cause, The Crown Estate reserves the right to make a decision in your absence on the evidence available.

## 6. Procedure at a capability meeting

A capability meeting will usually be held by your immediate superior. However, in some circumstances the meeting may be held by another more senior employee directly or indirectly responsible for your area.

The aims of the meeting will be to:

- explain clearly, by providing examples, the shortfall between your performance and the required standard;
- identify with you the root cause of the poor performance and to consider why any measures taken so far have not led to the required improvement;
- any remedial action, coaching, training, support etc. which can be provided that may improve performance;
- discuss targets for improvement and a timescale for review;
- set a reasonable period for you to reach the standard and agree a monitoring system for that period;
- inform you what will happen next and ultimately if the standards are not met. If dismissal is a possibility consideration will be given to practical alternatives such as redeployment;
- provide you with an opportunity to express your views on all these matters.

A meeting may be adjourned if we need to gather any further information or give consideration to matters discussed at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the meeting is reconvened.

The outcome of the meeting will be confirmed in writing to you as soon as practicable after the meeting. You will be informed at this stage of your right to appeal against the decision. Action may include any of the following:

### Stage 1 - First Written Warning

Following a Stage 1 capability meeting, if we decide that your performance is unsatisfactory, we will give you a first written warning, setting out:

- the areas in which you have not met the required performance standards;
- targets and timelines for improvement;
- any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- a period for review;

- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The warning will be confirmed to you in writing, including the period of time the warning will remain “live”.

Your performance will be monitored during the review and we will write to inform you of the outcome:

- if your manager is satisfied with your performance, no further action will be taken;
  - if your manager is not satisfied, the matter may be progressed to a Stage 2 capability meeting;
- OR,
- if your manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **Stage 2 - Final Written Warning**

If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability meeting. We will send you written notification as set out in section 5 above.

Following a Stage 2 capability meeting, if we decide that your performance is unsatisfactory, we will give you a final written warning, setting out:

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

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- if your manager is satisfied with your performance, no further action will be taken;
  - if your manager is not satisfied, the matter may be progressed to a Stage 3 capability meeting;
- or
- if your manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **Stage 3 - Dismissal or Redeployment**

We may decide to hold a Stage 3 capability meeting if we have reason to believe:

- your performance has not improved sufficiently within the review period set out in a final written warning;
- your performance is unsatisfactory while a final written warning is still active; or
- your performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

We will send you written notification of the meeting as set out in section 5 above.

Following the meeting, if we find that your performance is unsatisfactory, we may consider a range of options including:

- dismissing you;

- redeploying you into another suitable job at the same or a lower grade;
- extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period);
- giving a final written warning (where no final written warning is currently active).

Dismissal will normally be with full notice, unless your performance has been so negligent as to amount to gross negligence, in which case we may dismiss you without notice or any pay in lieu.

## 7. Appeals

All employees have the right to appeal against any decision under this Procedure. If you wish to appeal, you should write to the nominated person within 5 working days of receiving the written notification of the decision. The business will deem that the notification of the decision will have been received by you within 3 days of it being posted to you. All correspondence will be sent to your home address as notified by you to the business from time to time. Your appeal letter must set out the reasons why you are appealing. Please note, that an appeal will not suspend or delay any action taken (including dismissal).

The business will arrange for an appeal meeting to take place.

The appeal will normally be heard by a more senior manager (unless the business considers this is not reasonably practicable). The decision of the manager conducting the appeal will be final.

Following the appeal meeting the manager conducting the appeal may:

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

The decision will be confirmed to you in writing.

You must make every effort to attend the appeal meeting. If you fail to attend the appeal meeting, the business reserves the right to take a decision on your appeal in your absence.

- There is no further right of appeal

## Document Control

### Document History:

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### Document Review:

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### Document Approval:

Name/Title	Signature	Approval Date	Valid from date	Review date
Simon Boulcott Head of HR		July 2018	July 2018	June 2019