



Church Of Scotland
Ministries Council – Ministries Development Staff

Capability Policy

CAPABILITY POLICY

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Version	Date	Author	Details/ Changes
1	October 2018	Karen Smith, HR Manager	New Policy
2	March 2020	S. Thomson	Update
3	July 2023	Karen Smith, HR Manager	Sections 3.5.2 & 8 – update to staffing structure and national office terminology



1 PURPOSE & SCOPE

- 1.1 The primary purpose of this capability procedure is to provide support, training, development and other assistance as necessary to employees who are not performing their duties to the expected standard in order to enable them to undertake their role to the standard required. The procedure applies to all employees of the Ministries Council (“the MC”).
- 1.2 The MC recognises that while employees will generally want to perform to the best of their abilities at work, there may be occasions when they may be performing less well and that might be for a number of reasons either within or out with the employee’s control. In these circumstances, it is expected that the procedure will require to be invoked for a short period until the employee returns to normal, satisfactory performance. The main focus of this procedure is therefore to return below satisfactory performance to satisfactory performance.
- 1.3 Where the performance is not improving despite the support and assistance provided, this procedure also explains the formal action which may be taken. Where there is no expectation that satisfactory performance will be achieved in the required timescale, this procedure permits the MC to terminate an employee’s contract of employment on that basis. However, the MC expects that in the majority of cases, short-term use of the procedure will achieve the required improvement and no further action will be needed.
- 1.4 Below standard or poor performance is defined as ‘unsatisfactory performance whereby an employee is unable to attain or maintain the reasonably required level of performance relating either to standard or output of work (or both). This is different from misconduct or unacceptable behaviour which is dealt with separately under our disciplinary procedures.
- 1.5 While this procedure is not designed to address situations where an employee has difficulty in reaching the required standard of performance due to ill-health or disability, it may be used in the first instance to identify problems which may exist and thereafter separate policies will apply.

2 INFORMAL ACTION

- 2.1 It is expected that minor issues regarding performance will be resolved by way of the normal day to day discussions between line manager and employee when and if issues arise. The MC believes that early intervention along with good, two-way communication will mean that most performance issues will be able to be resolved quickly and effectively before they become a problem.
- 2.2 The role of line manager is to monitor and manage the performance of all employees they line manage. This means that they need to understand all roles within their team, set reasonable standards for those roles and communicate them ensuring regular contact with all employees regarding how they are performing. This is liable to be by way of day to day contact, one to one meetings and the performance development review process.



- 2.3 Where issues of a minor nature regarding performance arise, the line manager will raise these with the employee as soon as possible. Through discussions, they will identify the reasons for any performance issues, what support or assistance may be required and how that may be provided. In addition, if it is established that there are performance issues, they will discuss what improvements or changes are required and the timescale for improvement or change. It is anticipated that in most cases this will address any performance issues and no further action will be required. The line manager will thereafter continue to monitor the employee's performance in the usual way.
- 2.4 Where informal action is not achieving the required improvement, the line manager may follow the formal procedure outlined below.
- 2.5 It is important that at all stages in the procedure, the employee shares with their line manager any information about what may be preventing satisfactory performance and what might assist them to meet the required standard. In this way, the line manager can determine in discussion with the employee, how best they can provide support and enable the employee to return to performing their duties satisfactorily.
- 2.6 If, having raised performance issues with an employee and having provided the agreed support, training, development and other assistance, and this not having achieved the level of performance required within the timescale set, the line manager may move to the formal procedure for managing performance, set out in point 3. In certain cases of poor performance, the line manager may move immediately to the formal procedure.

3 FORMAL ACTION

STAGE ONE FORMAL DISCIPLINARY ACTION

- 3.1 Where informal action has been unsuccessful in achieving the improvement required, or where the line manager decides that there are good reasons to move immediately to the formal procedure, the line manager will invoke formal action.
- 3.2 **Stage One Initial Performance Meeting**
 - 3.2.1 A formal meeting should then be arranged with the employee, giving at least 5 days' notice, to review and discuss their performance, where it is falling short of what is required and the evidence to support the view that their performance is not meeting required standards. This meeting will include a representative from the HR team, usually an HR Advisor. The employee has the statutory right to be accompanied at this meeting.
 - 3.2.2 The meeting will be held without unreasonable delay. The employee and any companion must make every effort to attend the meeting. Where they are persistently unable or unwilling to attend a meeting without good cause the MC will make a decision on the evidence available.
 - 3.2.3 At the meeting the line manager and the HR Advisor should discuss with the employee;



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- Make clear the area(s) in which their performance is below expectation and explain the grounds/evidence for this view.
 - Seek to identify any problems or reasons for their under-performance.
 - Set an improvement plan, incorporating targets, standards, deadlines and further support or assistance (Stage One Performance Plan).
 - Seek their commitment to reaching the required standards.
 - Set a reasonable time-frame within which improvement is expected.
 - Set up regular progress review meetings during the review period and a formal meeting at the end of it.
- 3.2.4 If the employee disagrees that their performance is below standard, they should explain why that is and be prepared to provide evidence to support their view.
- 3.2.5 The aim of the meeting will be for the employee and their line manager to reach agreement regarding the standard of their performance and to agree an action plan for addressing any improvements which are deemed necessary.
- 3.2.6 The meeting will be attended by a member of the HR team. This will assist the employee and their line manager to create the Stage One Performance Plan and ensure that any support which has been identified is put in place particularly where that support may be beyond arrangements which would normally be made by their manager.
- 3.2.7 The Stage One Performance Plan will be based on clear and reasonable targets for improvement with realistic timescales for review. Where the plan involves other employees' input, it must be shared and agreed with them also. The plan will include the date of the formal review meeting at the end of the Stage One Performance Review Period, which will be agreed by all parties so that all concerned will be available to attend it.
- 3.2.8 After the meeting the line manager will write to the employee enclosing a copy of any notes of the meeting and the Stage One Performance Plan as agreed. The Employee will be reminded that their performance will be subject to monitoring during the review period. The Stage One Performance Review Period will normally be the length of time during which it will be possible to ascertain whether an improvement has been achieved and this is dependent upon the job cycle or cycle of activities within the job. In normal circumstances this is liable to be not less than four weeks but not more than three months. The Employee will be reminded in the letter that failure to improve in line with the Stage One Performance Plan will normally result in the Stage Two of the procedure being invoked and that ultimately the result could be their dismissal.
- 3.2.9 Where the outcome of the Stage One meeting is acceptance that their performance is satisfactory, and no further action is required, this will be notified to the employee in writing.



3.2.10 Where their performance significantly deteriorates during the Stage One Performance Review Period, their line manager is entitled to move to Stage Two of the procedure before the Stage One Review Period has concluded.

3.3 Stage One Performance Review Meeting

3.3.1 At the end of the agreed review period (or earlier as above), the manager should arrange to meet the employee formally to review their performance and if there has been no improvement or it has deteriorated, to move to Stage Two of the Formal process. At least 5 days' notice of the meeting will be given and the employee must be informed of the right to be accompanied. A member of the HR team will also attend.

3.3.2 This meeting will be conducted in the same manner as the Stage One meeting. However, in addition to the relevant matters listed under the Stage One Initial Performance Meeting, the following will also be discussed:

- consider the extent to which their performance has failed to reach the set standards and identify clearly and openly any shortfall against what was agreed with in the Stage One Performance Plan, and make an assessment of the elements of work that cannot be performed adequately.
- invite the employee to give their opinion on progress made, the support, training and other assistance made available to them and any other options which were considered by the employee and manager.

3.3.3 The outcome of this review meeting will be either;

- Significant improvement in performance achieved, in which case all documentation will be placed on the employee's personal file and will be removed after 12 months, with normal monitoring continuing; or
- No significant improvement in performance, in which case the capability procedure will continue. A first written warning will be issued and will remain on your file for a period of eighteen months. The employee may exercise their rights to appeal against the decision to issue either a first or final written warning provided they do so in writing within ten working days of receipt of the letter intimating such decision.
Note: If an appeal is lodged, the monitoring of performance will continue until such time as the Appeal Group issues a decision.

3.3.4 If it is agreed that there has been no improvement and that the next stage of the formal process should be implemented, the meeting should continue and discuss:

- Make clear the area(s) in which their performance is below expectation and explain the grounds/evidence for this view since the Initial Performance Meeting.
- Seek to identify any problems or reasons for their under-performance.
- Set an improvement plan, incorporating targets, standards, deadlines and further support or assistance (Stage Two Performance Plan).
- Seek their commitment to reaching the required standards.



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- Set a reasonable time-frame within which improvement is expected.
- Set up regular progress review meetings during the review period and a formal meeting at the end of it.

3.3.5 After the meeting the line manager will write to the employee enclosing a copy of any notes of the meeting and the Stage Two Performance Plan as agreed. The Employee will be reminded that their performance will be subject to monitoring during the review period.

3.3.6 The Stage Two Performance Review Period will normally be the length of time during which it will be possible to ascertain whether an improvement has been achieved and this is dependent upon the job cycle or cycle of activities within the job. In normal circumstances this is liable to be not less than four weeks but not more than three months. The Employee will be reminded in the letter that failure to improve in line with the Stage Two Performance Plan will normally result in the third stage of the procedure being invoked and that ultimately the result could be their dismissal.

3.3.7 Where the outcome of the Stage Two meeting is acceptance that their performance is satisfactory, and no further action is required, this will be notified to the employee in writing.

3.3.8 Where their performance significantly deteriorates during the Stage Two Performance Review Period, their line manager is entitled to move to Stage Three of the procedure before the Stage Two Review Period has concluded.

3.3.9 The manager should record the meeting and ensure that the main points and the agreed Stage Two Performance Plan, are recorded. The employee should be advised that a failure to improve performance levels will result in a move to the next stage in the formal procedure, which could be consideration of dismissal. The manager should give the employee a copy of the note of the meeting, within 5 days, agree the record and ensure the note is signed.

3.4 Stage Two Performance Review Meeting

3.4.1 At the end of the agreed review period (or earlier if there has been no improvement or a significant deterioration), the manager should arrange to meet the employee formally to review their performance, and if there has been no improvement, to move to Stage Three of the Formal process. At least 5 days' notice of the meeting will be given and the employee must be informed of the right to be accompanied. A representative from the HR team will also attend.

3.4.2 This meeting will be conducted in the same manner as Stage One Performance Review Meeting



3.4.3 The outcome of this review meeting will be either;

- Significant improvement in performance / acceptable level of performance achieved, in which case all documentation will be placed on the employee's personal file and will be removed after 12 months; or
- No significant improvement in performance, in which case the capability procedure will continue. A Final Written Improvement Warning will be issued. The employee may exercise their rights to appeal against the decision to issue a final written warning provided they do so in writing within ten working days of receipt of the letter intimating such decision.
Note: If an appeal is lodged, the monitoring of performance will continue until such time as the Appeal Group issues a decision.

3.4.4 Final written warning will normally remain on your record for a period of eighteen months and reminding you that you may be dismissed if no acceptable improvement in performance is achieved within the given timescale. Prior to any dismissal decision consideration will be given as to whether there is any suitable alternative employment available for you.

3.4.5 If it is agreed that there has been no improvement and that the next stage of the formal process should be implemented, the meeting should continue and discuss:

- Make clear the area(s) in which their performance is below expectation and explain the grounds/evidence for this view since the Stage One Performance Review Meeting.
- Seek to identify any problems or reasons for their under-performance.
- Set an improvement plan, incorporating targets, standards, deadlines and further support or assistance (Stage Three Performance Plan).
- Seek their commitment to reaching the required standards.
- Set a reasonable time-frame within which improvement is expected.
- Set up regular progress review meetings during the review period and a formal meeting at the end of it.

3.4.4 After the meeting the line manager will write to the employee enclosing a copy of any notes of the meeting and the Stage Three Performance Plan as agreed. The Employee will be reminded that their performance will be subject to monitoring during the review period.

3.4.6 The Stage Three Performance Review Period will normally be the length of time during which it will be possible to ascertain whether an improvement has been achieved and this is dependent upon the job cycle or cycle of activities within the job. In normal circumstances this is liable to be not less than four weeks but not more than three months. The Employee will be reminded in the letter that failure to improve in line with the Stage Three Performance Plan will normally result in a disciplinary hearing that ultimately could result in their dismissal.



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- 3.4.7 Where the outcome of the Stage Three meeting is acceptance that their performance is satisfactory, and no further action is required, this will be notified to the employee in writing.
- 3.4.8 Where their performance significantly deteriorates during the Stage Three Performance Review Period, their line manager is entitled to move to a disciplinary hearing before the Stage Three Review Period has concluded.
- 3.4.9 The manager should record the meeting and ensure that the main points and the agreed Stage Three Performance Plan are recorded. The employee should be advised that a failure to improve performance levels will result in a move to the next stage in the formal procedure, which could be consideration of dismissal. The manager should give the employee a copy of the note of the meeting, within 5 days, agree the record and ensure the note is signed.

3.5 STAGE THREE FORMAL DISCIPLINARY ACTION

If it appears that the employee has failed to show the improvement required at Stage One and Stage Two, Stage Three will be invoked and a plan for improvement put in place. [See 16.2.4](#)

3.5.1 Stage Three Performance Review Meeting

At the end of the agreed review period (or earlier if there has been no improvement or a significant deterioration), the manager should arrange to meet the employee formally to review performance, and if there has been no improvement, to move to Stage Three of the Formal process. At least 5 days' notice of the meeting will be given and the employee must be informed of the right to be accompanied. A representative from the HR team will also attend.

This meeting will be conducted in the same manner as Stage One Performance Review Meeting

The outcome of this review meeting will be either;

- Significant improvement in performance / acceptable level of performance achieved, in which case all documentation will be placed on the employee's personal file and will be removed after 12 months; or
- No significant improvement in performance, in which case the capability procedure will continue.

3.5.2 Stage Three – Dismissal

A further meeting with the Ministries Development Manager and the Head of HR or in their absence, the HR Manager, will be arranged with the employee. At least 5 days' notice should be given in writing; setting out the reasons for the concern and that there is a risk of dismissal. The statutory right to be accompanied should be provided for.



They will:

- Hear evidence from all parties
- Answer any questions
- Review all of the action that has been taken

The Ministries Development and Head of HR may then decide:

- That no further action be taken
- If the matter is serious but they believe that the employee has not been given the time, support and assistance to improve, or that there has been a significant procedural flaw causing a substantial disadvantage or unfairness to the employee, they may refer it back to the line manager for action to recommence at either the Stage One, two or three.
- However if they believe that dismissal is the right course of action because of the employee’s failure to improve, they may take the decision to dismiss the employee.

They must write to the employee within five working days of the date of the meeting to intimate the decision, reasons for the decision and advise on the employee’s right of appeal if the decision has been made to dismiss the employee. The appeal must be submitted to the Solicitor of the Church, as Secretary to the Personnel Appeals Group within 10 working days of receipt of the written decision. If the decision is to dismiss it is only the Head of HR or in their absence the HR Manager in consultation with the Head of Department that can take the decision to dismiss on the grounds of capability due to unsatisfactory performance.

3.6 NOTICE

The following periods of notice will be given for dismissal on the grounds of capability due to unsatisfactory performance.

Continuous employment for	Notice on dismissal
up to 4 weeks	None
4 weeks to 5 years	1 Month
Thereafter increasing by 1 week per year up to 12 years	1 week for every year of continuous service up to a maximum of 12 weeks

4 Review

This policy will be reviewed on a regular basis by HR, The Hub and Faith Action senior managers to ensure adherence to best practice, and any related legislation. If necessary, the policy will be taken to the Faith Action Programme Leadership Team (Ministries Council is the employing body of FAPLT) as part of a consultation process.