

DISCIPLINARY (CAPABILITY) POLICY

Purpose

The purpose of the capability procedure is to support and encourage employees to achieve standards of performance that are in line with the expectations of Pay4Property Ltd.

It is also to ensure that there is a fair and systematic approach to performance and capability management such that any action to address poor or unsatisfactory elements of performance is carried out in a manner which conforms to legislative requirements and best practice

It is Pay4Property Ltd UK's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

This procedure is for guidance only and does not form part of any employee's contract of employment.

Scope

This procedure applies to all direct employees of Pay4Property Ltd hereafter refer to as "the Company".

This procedure does not apply to employees who are still within their probationary period as defined by their terms and conditions of employment and/or within their first 12 months of employment. Issues with Capability or standards of performance during this time will be addressed via probationary reviews which allow for probation to be extended and/or employment terminated if the employee does not meet the required standards.

Where employees are governed by working rule agreements then the procedure contained in the appropriate working rule agreement will be regarded as the primary procedure, so long as it reflects the principles of best practice.

Under performance from agency or other non direct workers is not acceptable and action must be taken to deal with these firmly yet responsibly within the terms of the appropriate contract for services in place.

Specific Responsibilities

Senior Managers/Line Managers/Supervisors: Generally it will be an employee's Supervisor or line Manager who will identify lack of capability. They are also best placed to thoroughly assess areas of dissatisfaction with an employee's performance.

A company director: Is responsible for ensuring that this procedure is applied correctly and advice and guidance is available throughout the process. The Director will normally attend any formal meetings and take notes and ensure that all parties confirm that the notes are an accurate record of the discussions.

Background

Capability versus Conduct

As there are separate procedures in place to deal with issues of Capability and Conduct, it is important for all to understand how Pay4Property Ltd UK distinguishes between the two.

Conduct presents itself often in relation to an event or series of events. Judgements are normally made about conduct after an investigation has been carried into the circumstances surrounding the event.

Capability is something that becomes apparent over a period of time and judgements are generally based on assessments and opinions of performance, outcomes and achievements or the lack of them.

This procedure focuses on capability issues and in particular how instances of poor performance will be handled by the Company.

The outcome of the procedure may result in dismissal where the Company believes, after consultation, that the employee lacks the capability to perform the job for which he or she was employed and or that in the Company's opinion potential improvement measures would have little or no chance of success or are uneconomic. The attitude of the employee will inevitably influence the Company's assessment in this respect.

Principles

Whilst the procedure in this document outlines a 3 stage approach, the Company is not bound to go through all 3 stages especially if there is an unresponsive attitude from the employee or there is little confidence that, by instigating the procedure, an improvement will be forthcoming; as evidenced through discussions or meetings. (The overall process for handling these situations will work within a generic framework, however, the remedies and outcomes i.e. actions required and agreed are likely to be different in each case).

Employees will not normally be dismissed without warning or, more importantly without being given an opportunity to achieve acceptable performance levels. However dismissal will be an appropriate sanction if the Company determines that there is little demonstrable evidence or management confidence that any remedial or improvement plan will succeed or has a

reasonable chance of success. This may well be determined by the Company's assessment of the employee's attitude and response.

The severity and resulting impact and scenarios of underperformance will also influence how the Company proceeds.

This procedure does not apply to cases involving misconduct – the Disciplinary Procedure – Conduct should be followed to address all misconduct issues.

Managing Capability

Stage 1: Informal Resolution – Manager and Employee

Most performance issues will be hopefully resolved between an employee and their line manager as part of normal day-to-day management. Discussions should be held in private and without undue delay wherever there is cause for concern. Early and regular dialogue to advise the employee of concerns and how they can be rectified is recommended. It is important that any remedial action has a clear time frame and set of expectations set down.

A diary note of such informal discussions must be retained by the line manager. This will be escalated to a more formal approach if 1) informal discussion is not appropriate (for example, because of the magnitude of the performance issue), or 2) where an earlier Stage 1 informal discussion has not resulted in a satisfactory improvement.

Potential Outcome of stage 1: Informal verbal warning

Warnings issued at this stage will be in the form of a file note as retained by the manager. The manager will explain to the employee that a file note is being recorded, the reasons why and what it says. It is not confirmed in writing to the employee and there is no right to appeal at this stage. The only written outcome is likely to be a performance improvement plan that has been agreed between both parties.

Stage 2: Assessment and Remedy Actions (formal stage)

Where the Company has continuing concerns about shortfalls in an employee's capability as reflected in performance or approach, it will undertake an assessment of the employee's performance, including its impact, to determine what further remedial action should be instigated. This will be known as a Capability Hearing (see further section 'The Capability Hearing'). The steps the Company will take will depend on an individual's circumstances but may include reviewing: earlier events and discussions: an employee's personnel file including PDR/appraisal or performance review records: gathering any relevant documents in place for monitoring an employee's recent work.

The line manager, will also arrange for the hearing to be held with the employee so that the discussions on the shortfall and concerns in performance are formally recorded together with a summary of any performance related discussions. The employee will be invited to respond and give reasons as to any mitigating circumstances explaining why the shortfalls in capability or performance have arisen. The hearing should also consider the success or otherwise of any improvement plans outlined at any earlier informal meeting.

At this is the first formal stage of the capability procedure, it will be for the line manager and the Employee to agree whether it is advisable to have a companion in attendance, (it may be necessary to overcome any disability or difficulty in understanding English).

The expectation is that a written record of the meeting will be made and that a Performance Improvement Plan will be formulated during, or as a result of the meeting.

The written record of the hearing should include as a minimum:

- The areas in which an employee has not met the required standards and reasons for concern on capability;
- employee response or points of mitigation

The Improvement Plan should include as a minimum:

- Targets for improvement;
- Any measures, such as additional training or supervision, further clarity of role and duties, or attitude changes, which will be taken with a view to improving performance;
- A period for improvement; and
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.
- agreed action points
- time frame set
- next review

The Company will set down the methodology by which it will address these issues to achieve required expectations and standards. The employee's progress will then be monitored over a defined period.

The introduction of such remedies assumes there is confidence in the employee that any investment will achieve the required improvement. If the introduction of such remedies resolves the issues then no further action will be taken.

Potential Outcomes of stage 2: First and Final Written Warning or Termination of employment

The outcomes as described above will be as a result of a formal capability hearing. In the section above there is some detail as to the content of the hearing and potential improvement plans. Where appropriate a first and final written warning will be issued in conjunction with any improvement plan formulated as a result of the capability hearing. In certain cases and especially where the employee displays a negative and unresponsive attitude, the Company may decide that termination of employment is appropriate as there is little or no chance of any improvement plan being successful.

Stage 3: Final Performance Management Procedure

Generally speaking if the two steps above have been followed and action plans implemented have not generated the required improvement in performance levels and capability, the Company will then instigate a final formal performance management hearing'.

In preparation for such a hearing:-

- The employee will be informed in writing of the perceived shortfall in capability and performance, and where the earlier processes have failed to generate improvement required.
- The Company will also include, if appropriate, a summary of any relevant information gathered as part of the earlier assessment plus copies of any relevant documents which will be used at the capability hearing
- The invite will give the employee notice of the date, time and place of the formal performance management hearing. It is recommended that the employee receives, as a minimum, 3 working days advance notice of the hearing.
- The invite will advise the employee of the right to be accompanied to the hearing. This mirrors the arrangements set out in the disciplinary procedure in connection to conduct i.e.; this can be a work colleague or recognised representative.

Potential Outcome from Stage 3: Termination of Employment

Termination of employment is likely to happen as a result of the final capability hearing. As, at this stage, it is likely that improvement plans have failed to generate the required improvement or the attitude of the employee has been or become unresponsive and negative to the extent that the procedure has been exhausted. In these cases termination of employment will normally be with contractual notice; or in cases where the Company has deemed the poor performance to be so severe as to go straight to stage 3 then this will be treated as if it were gross misconduct and summary dismissal may be the sanction.

As an alternative to dismissal, the Company may, in exceptional circumstances, offer the employee the opportunity to move to a lesser role on a reduced salary and associated terms.

The Company aims to treat all employees fairly and consistently and will be mindful of sanctions imposed on any other employee for similar poor performance when deciding what sanction to impose. However, each case will ultimately be judged on its own merits and will be subject to the Company's duty of confidentiality. The impact of the underperformance on the business and the attitude of the employee will influence and dictate whether the Company may move from Stage 1 to Stage 3 of this procedure.

The Capability Hearing (see stages 2 and 3):

This section sets out some points as to how capability hearings should be handled.

The hearing will normally be chaired by the appropriate line manager and will open with a summary of the facts and events to date.

The Employee will be given the opportunity to set out their case, answer any concerns or views expressed, present evidence and, ask further questions.

The Company will also review any mitigating causes provided for under performance.

Representatives are there to take their own notes – and then exchange such notes to produce a mutually agreed set of meeting notes.

The Representative's role is to observe and support the employee but should not answer questions on behalf of the employee.

A representative is not generally expected to participate in discussions, which will be directly with the employee. If, however, the representative has something relevant to add or believes an important point has been missed they should indicate to the person chairing the hearing that they would like to contribute.

The employee may call relevant witnesses at the hearing, if appropriate (and this must be with advance notice).

The employee will be given the opportunity to respond to any information given or comments received in respect of their performance.

The hearing may be adjourned if further information is required.

After the Hearing:

After the hearing has been held the line manager chairing the hearing will decide what action is justified, including dismissal.

The line manager will inform the employee of the decision as soon after the hearing as possible and where possible in person. This will also be confirmed in writing as soon as possible after the capability hearing.

This document has already outlined a 3 stage procedure as to how poor performance will be addressed. This section summarises the likely outcomes at each stage.

At each stage the minimum expectation is that an improvement plan is detailed and agreed between manager and employee. However, dependant on the stage of the process, the employee will be given a level of warning proportionate to the stage they are at with the ultimate sanction being termination of employment.

The Right of Appeal

Any employee who is dissatisfied with a decision imposed upon them, as a result of any formal capability meeting, has the right of appeal.

If an employee feels that the action taken against them is wrong or unjust, they should appeal in writing against the decision stating in full their grounds of appeal. The appeal letter should be addressed to another Director of the Company. Any appeal should be submitted within 7 days of the date the outcome of the capability proceedings and detail specific areas of disagreement.

If an employee is appealing against a decision to dismiss them, the date on which their dismissal takes effect will not be delayed pending the outcome of the appeal. However, if their appeal is successful they will be reinstated with no loss of continuity or pay.

The appeal hearing will normally be held by a different Director.

Following the appeal hearing, the Company may:

- Confirm the original decision;
- Revoke the original decision; or
- Substitute a different outcome, including a review of earlier meetings and outcomes.

The decision made at the appeal hearing is final and will be confirmed in writing to the employee.

There will be no further right of appeal against this decision.

Expiry of Warnings

On expiry of the stated validity period of any formal warning, subject to there being a satisfactory improvement in performance, the warning will cease to have effect.

Where performance has still not reached the required level the Company reserves the right to extend a capability warning or to terminate employment if it is considered appropriate in the circumstances, as described above.

The norm will be for first and final written warnings to remain 'live' for 12 months. However the Company will proceed to the next stage within this timeframe if the agreed improvement plan is not met or performance worsens. The employee's attitude will also be taken into account.

After the active period of any warning has expired, the warning will remain on employees' personnel files but will be disregarded in deciding the outcome of future capability hearings. If required improvements are achieved then no further action will be taken under this procedure.

It must be recognised that it is the Company, through its management team, to determine:

- whether an individual is capable of improving performance, in order to meet required standards and expectations
- The circumstances warrant investment and time by assessing the likelihood of success.

An employee who displays a negative or unresponsive attitude towards improving their capability and performance will be treated differently in the relevant process from one who



acknowledges the Company's dissatisfaction and responds in a positive manner.

Our duty as an Employer is to be fair and reasonable whilst also ensuring that all employees have the capability to meeting reasonably expected performance levels and contribution.

Regular dialogue on performance goes a long way to establish this.