



# CAPABILITY IN EMPLOYMENT POLICY

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Destroy All Previous Issues

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## Glossary

| Term | Description |
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## 1 INTRODUCTION

This procedure sets out Badger's expectations of both managers and employees in the management of performance, behaviour and sickness related issues. The aim of the procedure is to establish good management practice and provide a framework within which managers can balance the needs of individual employees with the need to provide services to patients and to ensure the continued robustness of the organisation.

Badger recognises that good performance is necessary for the effective and efficient operation of Badger, and for the health and safety of patients and employees and is an important part of Badger's Clinical Governance Framework.

The aim of this procedure is to help staff and managers identify and improve unsatisfactory performance and to support staff in achieving the required standards.

The Capability in Employment Procedure deals with situations in which the employee is not performing his or her job satisfactorily.

Where poor performance is considered to be owing to negligence or unwillingness to carry out duties properly, rather than an inability to do so, this should be dealt with as a conduct issue under the disciplinary policy.

## 2 DEFINITION OF CAPABILITY

The Employment Protection (Consolidation) Act 1978 {Section 142} as amended by the Employment Rights Act 1996 defines 'capability' as 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'.

Grounds for the use of the Capability Procedure will fall into one of two categories:

- i) Lack of ability in relation to skill, aptitude, physical or mental quality
- ii) Lack of capability through ill-health

Where an individual is deemed incapable of achieving or maintaining the required performance standards as a result of ill health, this should be addressed under Badger's Management of Sickness Absence Policy. In some cases, it may be necessary to refer to the Disability Policy and the Equality Act 2010 where reasonable adjustments may need to be made to accommodate an employee.

## 3 GENERAL PRINCIPLES OF THE PROCEDURES

As part of day-to-day interaction between manager and/or employee and through the appraisal system, employees should continue to be made aware of the standard of their work. Any problems should already have been highlighted and resolutions attempted. However, if a shortfall in performance is ongoing or more fundamental, this procedure should be applied.

Employees have a responsibility to achieve a good performance and where problems exist, should be given help and encouragement to achieve a good standard. In all cases, managers should point out how current performance fails to meet the required standard. Consideration should be given to the extent in which any shortfall in performance is contributable to the employee, or owing to unreasonable expectations, or lack of proper explanation on the part of management, or lack of resources.

Timescales and targets for improvement need to be agreed and should take into account the nature of the job and how long the manager believes it will take for the employee to improve. Proper training and supervision may be essential for the achievement of satisfactory performance. The employee's progress should be monitored regularly during the review period and timescales should not overrun without a further review being undertaken.

Managers should discuss problems immediately with staff, informally or formally, as they are more likely to be resolved if addressed at the earliest opportunity.

Unsatisfactory performance may occur for a number of reasons, these may include, but not exclusively, occur where skills have become outmoded by new technology; reorganisation within the company or changing patterns of work. Where practicable, help and necessary training should be given to enable employees to achieve any new skills that may be required.

Where it is alleged that an employee has committed a single error and the actual potential consequences of that error are so serious that it may be impossible to allow the employee to continue in employment, Badger's Disciplinary Policy should be implemented. It should be dealt with in the same way as for gross misconduct.

Where reasonable adjustments have been made and the employee is still not achieving the required standards, or if the inadequate performance is not related to the health issue, it will be appropriate to progress through this policy.

## 4 LIMITATIONS OF THE PROCEDURE

Where an issue is considered to be both a performance problem and misconduct, then the matter will be dealt with under the Disciplinary Procedure. The employee will be informed in writing by the manager at the beginning of the process which procedure is to be applied, and their right of representation, at any formal stage.

If there is evidence to suggest that an employee on sick leave is not legitimately ill, but taking unauthorised absence this will be dealt with as a conduct issue under the Disciplinary Procedure.

## 5 CAPABILITY PROCEDURE

(Dealing with unacceptable work performance)

### Key Points

- a) Define precisely in writing the requirements of the job and explain where the employee's performance is not meeting the agreed standard.
- b) Find out (in discussion with the employee) why the employee is not achieving that target/agreed standard and decide whether the reasons are as a result of the employee's conduct or capability or lack of resources.
- c) Consider if there is anything that can be done to support, help and encourage the employee, e.g. re-training, extra supervisory attention, additional courses, mentoring, coaching or counselling.
- d) Refer to Occupational Health if performance may be linked to a medical condition.
- e) Consider reaffirming objectives, setting new or resetting objectives as appropriate (in consultation with the employee), and give a reasonable review period. (Review lengths will depend on the complexity of the job).
- f) Advise the employee what will happen if he or she fails to complete the review period satisfactorily.
- g) Timescales for review periods and warnings will depend on the nature and complexity of the job and the improvement required.

## 6 ILL HEALTH PROCEDURE

In the case of ill health, Badger's Occupational Health consultant will meet with the staff member at the earliest opportunity to provide assistance. The staff member will be required to work with the OH consultant throughout any period of ill health.

Human Resources and Occupational Health advice should be sought in all cases of ill health. This is so that support and guidance may be provided to the staff member whilst also allowing managers the opportunity to plan workloads to ensure the needs of the service are not compromised.

Where performance in the post deteriorates as a result of a worsening health condition or disability, the manager should consider what reasonable adjustments could be made to the job or the work environment to accommodate the disability and assist in improving their performance. Adjustments should not be made to the standards required, only to the means by which the standards might be attained.

The Occupational Health Consultant will be asked to confirm whether or not the employee is fit to carry out the duties of their existing post and if so when; whether or not the employee is fit to carry out alternative work and if so when; whether or not the employee is unfit to return to work; or whether the prognosis is such that the employee is unlikely to return to work in the foreseeable future.

The number of meetings and the amount of time allowed for improvement before consideration of dismissal on the grounds of incapability due to ill health, or inability to actually attend work, will then be taken depending on the nature of the illness and the specific circumstances.

If the medical report indicates that the employee is permanently unfit or will remain unfit for the foreseeable future to return to work, the employee will be visited by their Line Manager together with a member of the Human Resources Team, or a meeting will be arranged at a mutually agreed location.

The employee will be informed of the Occupational Health Consultant's opinion and of the possible termination of his/her employment on the grounds of incapacity. Prior to the meeting Human Resources will have established the basic facts regarding the employee's contractual position, e.g. period of notice, holiday pay.

## 7 INFORMAL INTERVIEW – STAGE 1

When a manager identifies an employee who is failing to achieve a satisfactory work performance; the manager should follow points (a) to (g) as outlined above under section 5.

This will take the form of an informal interview. Attention should be drawn to the ways in which performance is deficient and the employee given an opportunity to explain his/her views of his/her performance.

Objectives should be set that will help the employee achieve the expected standard. The manager should explore with the employee ways of assisting him/her to reach these targets, e.g. increased training, supervision, re-training.

In order to assess progress a letter must be sent to the employee as a true reflection of the objectives set, timescales, support agreed etc.,

Where it is clear that poor performance is due to a lack of ability or skill, the manager should meet with the employee and set out in a clear and understandable way, where and how the performance falls short of the required standards. How the improvements are to reach the required standard should be explained. Training or re-training needs should be established together with an agreed timetable for improvement where appropriate. The period of the timetable will differ according to the needs of the individual. The manager should review this on a regular basis.

Where the employee's performance improves to the required standard at the end of the monitoring period, the employee should be informed. This should be communicated both verbally and in writing. It should include a

reminder that such standard must be maintained, or further action may result in accordance with the Capability Procedure, which could result in their dismissal.

## 8 FORMAL REVIEW - STAGE 2

If the employee's standard of performance continues to be inadequate he/she must be advised of this in writing, and be required to attend a formal interview, with the manager, who should be accompanied by a member of the Human Resources team to discuss the problem. An employee will be given at least five working days notice in writing of a formal interview and reminded of their entitlement to be accompanied by a colleague who should be an employee of Badger or a full-time trade union representative.

Where appropriate this interview will be followed by a formal warning in writing, specifying the shortcomings, which led to the warning being given, and indicating that failure to improve to the standard required could lead to disciplinary action or final stage of this procedure. Again objectives should be set, adequate support given and a review date set that allows a reasonable period of time for an improvement to be achieved. The timescale for the review date will be dependent upon the improvement required to undertake the job.

Where the employee's performance improves to the required standard at the end of the monitoring period, the employee should be informed as such. This should be communicated both verbally and in writing. It should include a reminder that such standards must be maintained, or further action may result in accordance with the Capability Procedure, which could ultimately result in their dismissal.

The manager should consider whether other suitable employment or working arrangement within Badger is available. If an alternative post is offered and accepted pay protection will not apply.

## 9 FINAL STAGE

If sufficient improvement is not made following the formal warning to enable the employee's performance to be regarded as satisfactory, or if alternative employment has been offered and rejected by the employee, a final period to improve work performance will be given in writing and renewed targets/objectives and timescales.

The employee will be clearly told that if sufficient improvement has not been made by the end of this period, he/she will be seen again and this could lead to dismissal with notice or pay in lieu of notice. The employee should be given at least 5 working days notice of this interview, and reminded of their entitlement to be accompanied by a colleague who should be an employee of Badger or a full-time trade union representative.

The decision to dismiss can only be taken by a Director or the Chief Executive or other designated Senior Manager and a member of the Human Resources team). This will be confirmed in writing and the employee will be advised of his/her right of appeal against management's decision to dismiss at this stage. (Please refer to Disciplinary Appeals Procedure)

## 10 APPEALS PROCEDURE

An employee has the right to appeal against any level of the Capability action, but there is only one level of appeal. The employee must give written notice to the Head of Human Resources within fourteen calendar days of receiving written confirmation of the warning, stating the grounds for appeal, together with any relevant documents which he/she intends to produce at the appeal hearing.

## 11 APPEAL AGAINST DISMISSAL

If an employee wishes to appeal against a final written warning or dismissal, he/she should inform the Head of Human Resources of his/her intention, stating the grounds for the appeal together with any relevant documents which he/she intends to produce at the appeal hearing, within fourteen calendar days of receiving written confirmation of the

disciplinary action taken. The appeal will then be heard by the next level of management. At all stages a member of the HR team will be present.

## 12 AUTHORITY TO HEAR APPEALS AFTER THE DISMISSAL STAGE

An appeal against dismissal will be heard by a Director or the Chief Executive who have not previously been involved in the case. If the issue is solely one of professional misconduct, the Director or Chief Executive will be advised by a relevant professional who will be invited in order to advise the Chair and will be party to that final decision. However, if a Director with relevant professional experience has previously been involved in the case, then the panel may obtain professional advice from another appropriate adviser either within Badger or externally, who has not previously been involved. The panel will be advised by a member of the Human Resources team, who will act as an adviser to the panel.

The appeal decision if practicable, will be announced at the conclusion of the appeal hearing or as soon as possible thereafter, and given in writing within 7 calendar days.

The decision to dismiss can only be taken by a Director or the Chief Executive or other designated Senior Manager (accompanied by another manager, who should have the relevant professional experience if the matter is related to a professional issue and a member of the Human Resources team).

The decision of the appeal against dismissal will be confirmed in writing within seven calendar days of the appeal.

The decision of the appeal hearing is binding within the organisation and there are no further internal appeal processes.