

CAIRNGORMS NATIONAL PARK AUTHORITY

CAPABILITY POLICY

INTRODUCTION

1. The aim of the Capability Policy is to support employees into fully performing the duties expected of them and to address issues of under-performance on a formal basis. It is designed to deal with those cases where, despite the application of agreed policies, procedures and good management practices and support, the employee remains lacking in some area of ability, skill, competence or knowledge and is consequently unable to carry out the required duties to an acceptable standard.
2. The procedure provides an opportunity for:
 - a) encouragement, support and assistance
 - b) additional training opportunities
 - c) a structured and clear path for improvement
 - d) discussion and consideration of all relevant factors
 - e) the manager and employee to work together
 - f) employee representation where requested
3. Cairngorms National Park Authority is committed to high standards and excellence of delivery. The Authority recognises that the staff are its most valuable asset in achieving its objectives and our Performance Appraisal System recognises the contribution that each individual can make to achieve the National Park's core aims. On the occasions when there are any gaps between an individual's performance and the requirements of a job, the Authority aims to support and facilitate the ongoing performance and continuous improvement of our employees in order to address this.

APPLICATION AND SCOPE

4. This procedure outlines the process for managers to follow when addressing issues of under-performance, which have not been possible to resolve through normal management support.
5. It applies to all employees of the CNPA with the exception of employees who are subject to a period of probation, in which case the provisions of the probationary procedure will apply until probation is passed.

RELATIONSHIP TO DISCIPLINARY PROCEDURE

6. The Capability Policy is used for situations concerning a genuine lack of capability unlike the Disciplinary Procedure, which is used for situations where there is a deliberate failure or negligence on the part of an employee. If at any stage a manager has reason to believe that any aspect of the under-performance relates to issues of conduct, the manager should refer to the Disciplinary Procedure. For example, the capability process may be invoked where an individual is responsible for managing a team but fails to communicate effectively with them, resulting in errors being made.

In this instance, no disciplinary action is required as the individual has not failed to comply with any organisational policies, procedures or the law, but action needs to be taken to address their poor communication skills.

7. If there is any doubt whether the capability or Disciplinary Policy should be invoked, the manager should seek advice from HR

DISABILITY, ILL HEALTH AND UNDER-PERFORMANCE

8. If a manager considers that an individual's under-performance may be related to a disability or health condition he/she shall, in conjunction with HR, first investigate, verify and then address the circumstances. This may include referral to the CNPA's contracted Occupational Health Physicians to seek advice and/or confirm whether there is a health related reason. This referral can be instigated as part of the normal management support that precedes this process, or at any time during the formal stages of the procedure.
9. Should Occupational Health advise that the employee has a condition which is covered by the Disability Discrimination Act 1995 (DDA), reasonable adjustments will always be implemented to enable the employee to perform their duties to a satisfactory standard. This will not affect an employee's statutory rights.

RELATIONSHIP TO THE PERFORMANCE APPRAISAL SYSTEM

10. Should an individual receive two consecutive annual appraisals of below satisfactory performance, they will automatically be entered into the capability process as outlined in this policy. However, issues of concern regarding capability in performance should not wait until the next appraisal review meeting, but should be discussed with the member of staff as soon as is practical. An employee can be entered into the capability process at any time (either through self referral or through line management recommendation) in order to address any capability related issues and/or concerns in an appropriate and expedient manner.

REPRESENTATION

11. An employee is entitled to be accompanied by a Trade Union Representative or work colleague at all informal and formal stages of the capability process should they wish. The employee's companion should be allowed to address the meeting to put and sum up the employee's case, and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the worker's behalf

INFORMAL CAPABILITY PROCESS

12. Where a line manager or individual has concerns surrounding a staff member's capability, they should, in the first instance, arrange to hold an informal meeting to raise their concerns with the staff member, establish the root cause(s) of the issue and agree actions to help achieve improvement. All parties must be made aware of the nature of the meeting at least 7 days in advance to enable them to prepare for the meeting and to be accompanied by a representative if they require. Either the line manager or the member of staff could ask the HR Manager to facilitate the

discussion, but at this stage, it is an informal meeting, and it is perfectly acceptable for the discussion to involve just the member of staff and the line manager if they are both happy to proceed in this way.

13. If the capability issues are about a line manager's ability to manage, typically that person's own line manager would implement the capability process. Alternatively, a staff member could liaise with the HR Manager if they have concerns in this regard
14. In the event that there are still issues about capability after an agreed period of time and support (typically three months), the formal capability process will immediately be invoked with the individual being invited to a Stage I: Capability Review meeting.

FORMAL CAPABILITY PROCESS

15. There are three formal sequential stages in the capability process at which a Capability Review meeting(s) should be held. Normally all stages will be followed, and an individual should not be entered into the process without first being given an opportunity to improve as part of informal capability process detailed in point 18 above.
16. The capability process does not prevent the ongoing normal line management process of supervisory control whereby line managers allocate work, monitor performance, highlight work done well and draw attention to errors and poor quality. This should include informal assistance in achieving improvement.
17. The formal capability process ensures that the employee is informed of the shortfall in performance and is given the right of reply at all stages in the process.

Stage I: Capability Review Meeting

18. This meeting will normally take place at the end of the informal capability process, where an employee has failed to improve their performance to a satisfactory standard. More than one meeting can be held under each stage of the procedure if deemed appropriate by the line management or HR.
19. Employees will receive a minimum of seven working days notice in writing of this Stage I meeting. The written notification shall include:
 - a) Detail of the alleged shortfall in performance. This will be set out clearly with factual information. It will often be an accumulation of events that leads to the contention of a capability problem. If this is the case, these will be clearly documented.
 - b) Any supporting documentation to be referred to in the meeting
 - c) Details of any action previously taken which are relevant to the shortfall if it is still current on the employees record
 - d) Details of any training, support and assistance provided to date
 - e) The employee's right to representation
 - f) The employee's opportunity to submit any other document that they see relevant at least three working days prior to the meeting.
20. This meeting will normally be led by the line manager, and will be attended by HR and the employee (and the employee's representative if so required).

21. If, on conclusion of the review meeting, the line manager remains dissatisfied with the performance of an employee, the following actions shall be specified in writing:
- a) The improvement required with detailed timescales (minimum of 3 months). This will involve setting realistic targets against which performance can be measured
 - b) The training, support or assistance to be provided
 - c) A caution that failure to meet the improvement specified within the agreed timescales will mean that the matter will be considered at a Stage 2 meeting
 - d) The right of appeal against this caution to a manager at the same level/grade as the line manager's manager, but who has not yet been involved in this case. (This will usually be a Group Director at this stage)

Stage 2: Capability Review Meeting

22. Should the improvement specified at Stage 1 not be achieved within the timescales, a further meeting will be held.
23. This meeting will normally be lead by the employee's Group Director, and will be attended by HR, the employee's line manager and the employee.
24. If, on conclusion of the review, the Group Director remains dissatisfied with the performance of the employee, the following actions shall be specified in writing:
- a) The improvement required with detailed timescales(minimum 3 months). This will involve setting realistic targets against which performance can be measured
 - b) The training, support or assistance to be provided
 - c) A caution that failure to meet the improvement specified will mean that the matter will be considered at a Stage 3 meeting where their continued employment will be determined
 - d) The right of appeal against the caution to the next level up (who at this stage is most likely to be the CEO)

Stage 3: Final Capability Review Meeting

25. Should the improvement specified at Stage 2 not be achieved within the timescales, a final meeting should be held.
26. This meeting will normally be led by the Corporate Services Director, and will be attended by HR, the employee's line manager and the employee. The employee has the right to be accompanied by a work colleague (or their Union Representative) if they so wish.
27. If, on conclusion of the review meeting the Corporate Services Director remains dissatisfied with the performance of the employee, a decision will be taken regarding the continued employment of the employee. In reaching this decision the following factors shall be considered:
- a) The likelihood of the employee achieving and sustaining an acceptable standard of performance by extending the assistance offered and the timescale allowed under the previous stage i.e. reaffirming the caution previously given.
 - b) Whether redeployment is an option.

- c) Whether Ill Health Retirement is an option.
 - d) Other options where applicable
28. Should the Corporate Services Director decide that there is no further option available but to dismiss the employee on the grounds of capability, written notification of the decision will be provided to the employee, which will include the right of appeal to the CEO and 2 suitably trained Board Members. Dismissal will always be the last resort.

REDEPLOYMENT

29. Redeployment shall be considered prior to any dismissal although an employee does not have the right to be redeployed to a particular post. Redeployment will only be possible when there is a suitable alternative vacancy available in the organisation and the employee is deemed to be fit and able to carry out the duties of the alternative role to a satisfactory standard. Redeployment will only be effected when it is agreed between the CNPA and the employee.
30. All offers of redeployment will be made in writing specifying a trial period in which performance will be assessed. The implications of non-acceptance or an unsuccessful trial period should also be made clear to the employee. The “new” manager will determine the trial period in consultation with HR. The trial period will normally be 3 months, and will not exceed 6 months except in exceptional circumstances.
31. Where the individual is redeployed to a job at a lower grade/salary band, his/her current salary will be conserved (i.e. marked time will apply) until either the highest point of the lower salary band exceeds the individuals’ salary, or three years from the date of redeployment have elapsed. Should the three year rule apply, salary will be reduced to the recognised salary – i.e. the highest salary point in the lower band on the third anniversary of the date of redeployment.
32. Where an employee fails to perform to a satisfactory standard by the end of the trial period, the employee will re-enter the capability process at Stage 3.

RECORD OF DETAILS

33. A record of all Capability Reviews shall be kept on an employee’s personal file as information concerning their employment history. This information will be for internal use only and will not be provided to any other agency and will be retained in line with Data Protection Act. All employees will have the right of access to their personal file.
34. If a caution is issued at Stage 1 it will remain on file for a period of 12 months from the date of issue at which time it shall be removed (unless a further caution is issued at Stage 2).
35. If a caution is issued at Stage 2 or reaffirmed at Stage 3 of the procedure it will remain on the personal file for a period of 18 months from the date of issue at which time it shall be removed.

MONITORING OF REQUIRED IMPROVEMENT

36. As part of providing support and encouragement, the employee's performance shall be regularly monitored by management against the improvements required. When there is an acceptable level of improvement, an employee will receive written acknowledgement and shall be advised and encouraged that this standard of performance must be maintained. It is normal to set a further period of monitoring to ensure that performance does not fall back. This period will be agreed by the line manager and employee.

APPEAL RIGHTS

37. An employee may appeal at any stage in the capability process on issues of their capability and entrance into the capability process. To ensure impartiality, the appeal would be to the next level in another group, e.g. to a manager at the same level of the staff member's line manager's line manager.
38. An appeal against the issue of a caution will typically be heard by an identified Group Director. The appeal should be lodged in writing within five working days to the Group Director, and the reasons for the appeal should be clearly detailed.
39. An appeal against a dismissal will be heard by the Chief Executive of the CNPA, plus two appropriately trained Board members. It must be registered within 10 working days of the date when the termination notice is issued.

FAIRNESS OF APPLICATION

40. The CNPA is committed to ensuring that there is no unlawful discrimination and bias in the application of its policies and procedures. Any action taken under this policy will therefore be monitored to ensure fairness.
41. Any meeting held under this policy will be fully minuted, and the minutes of any such meeting or hearing will be shared with the employee concerned. This shall ensure that the procedure is followed in a transparent and fair manner.

DISSATISFACTION WITH THE OPERATION OF THE CAPABILITY POLICY

42. An employee may raise any concerns on issues relating to their capability and entrance into the capability process type through the appeal process detailed in section 50.
43. However, should an employee have concerns about the practical application of the capability process, they should raise this through the Grievance Procedure. Please note that in the event of any potential grievance, concerns should be raised informally first with HR before proceeding to formal grievance.

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