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Capability Procedure

This is the capability procedure for Brighton & Hove Social Welfare and Educational Trust Ltd.

This policy was updated in November 2021.

Signed:

Date:

Director of B&H SWET Ltd (the employer)

1. Introduction

- 1.1. The purpose of the Capability Procedure is to ensure that staff achieve and maintain the level of work performance expected of them and to provide a fair mechanism for dealing with those employees who are unable to achieve a satisfactory performance.
- 1.2. Capability is assessed in terms of the skills, aptitudes, and health which are required by the employee to carry out the work satisfactorily. Incapability is not a disciplinary matter. Where the employee has permanent ill-health or a disability, the employer will do everything reasonable to adjust the work conditions of the employee so that the employee is capable of carrying out the work satisfactorily.
- 1.3. This procedure is designed to clarify the rights and responsibilities of the Resource Centre, staff and trade unions in the event of capability action. It has three stages of interviews with the right of appeal at each stage.
- 1.4. It is expected that most problems with the work performance of an employee will be resolved under the Centre's training needs assessment or under the sickness review. This procedure will be used only where the Workers' Group considers that unsatisfactory working persists and is due to the lack of skills, aptitude or poor health of the employee.

2. Roles and responsibilities

- 2.1. **Manager:** the Workers' Group will designate a member of staff as Manager for the purpose of any Capability Procedure. The person designated as Manager must not be the staff member who is the subject of the Capability Procedure. The manager will present information about the employee's work performance to the interview.
- 2.2. **Personnel adviser:** a competent person from outside the Resource Centre will act as adviser on personnel and procedural matters.
- 2.3. **Capability Panel:** the panel for the capability interviews will be made up of two members of the Management Committee, one of whom will act as chair.
- 2.4. **Appeal Panel:** the panel for the appeal hearings will be made up of the chair of the Management Committee (or a substitute) and one other member; neither member must have taken part in the original Capability interviews.
- 2.5. **Representation:** the employee has the right to be represented by a trade union official or by a friend at any stage of this procedure.

3. Stage 1: First Capability Interview

- 3.1. If the Workers' Group is unable to resolve the problem, the manager will arrange for the Capability Panel to hold an informal interview with the employee, at a time convenient to all parties.
- 3.2. At the interview
 - 3.2.1. The manager will describe the work performance expected of the employee and explain how it has fallen short of the standards required; the manager will also describe what measures have been taken to improve the situation.
 - 3.2.2. The employee or the representative may offer an explanation.
 - 3.2.3. The Panel will set out a plan of action aimed at improving the employee's performance and set a time scale for reviewing matters.

- 3.3. A letter confirming the plan of action and the review period will be sent to the employee within seven days of the interview, stating that the employee's performance will be monitored during the review period.

4. Stage 1: Capability Review Interview

- 4.1. At the end of the review period the manager will arrange a further interview by the Capability Panel.
- 4.2. If the employee's performance has improved, the employee should be informed that it is now satisfactory and also be told that if a satisfactory performance is not maintained further capability action may be taken.
- 4.3. If the employee's performance has failed to improve, a Stage 2 capability interview will be arranged.
- 4.4. A letter confirming the decision will be sent to the employee within 7 days.

5. Stage 2: Second Capability Interview

- 5.1. The manager will arrange for the Capability Panel to hold a formal interview with the employee, at a time convenient to all parties. The Personnel Adviser will also be present.
- 5.2. At the interview
 - 5.2.1. The manager will describe the work performance expected of the employee and explain how it has fallen short of the standards required; the manager will also confirm that, despite additional support provided during the Stage 1 review period, the employee's performance has still not reached a satisfactory level.
 - 5.2.2. The employee or the representative may offer an explanation.
 - 5.2.3. The Panel will set out a further or revised plan of action aimed at improving the employee's performance and set a reviewing period. The employee will be formally told that failure to improve sufficiently may lead to further capability action, including dismissal.
- 5.3. A letter confirming the details of the interview will be sent to the employee within seven days of the interview.

6. Stage 2: Second Capability Review Interview

- 6.1. At the end of the review period the manager will arrange a further interview by the Capability Panel. The Personnel Adviser will also be present.
- 6.2. If the employee's performance has improved, the employee should be informed that it is now satisfactory and also be told that if a satisfactory performance is not maintained further capability action may be taken, including dismissal.
- 6.3. If the employee's performance has failed to improve, a Stage 3 capability interview will be arranged within 21 days.
- 6.4. A letter confirming the decision will be sent to the employee within seven days.

7. Stage 3: Final Capability Interview

- 7.1. The manager will arrange for the Capability Panel to hold a formal interview with the employee. The Personnel Adviser will also be present. The employee will be given at least 7 days' written notice of the interview.
- 7.2. At the interview

- 7.2.1. The manager will describe the work performance expected of the employee and explain how it has fallen short of the standards required; the manager will also confirm that, despite additional support provided during Stages 1 and 2 of the process, the employee's performance has still not reached a satisfactory level.
- 7.2.2. The employee or the representative may offer an explanation.
- 7.2.3. The Panel will consider the following options:
 - i. dismissal of the employee on grounds of the lack of capability
 - ii. dismissal on grounds of permanent ill-health
 - iii. a final warning and further training within a specified period
- 7.3. Where an employee is dismissed under 7.2.3 above, the length of notice will be that specified in the Centre's Terms & Conditions of Employment.
- 7.4. To dismiss the employee on the ground of permanent ill-health the employer must have obtained medical advice as to the employee's condition and prospects. Where the employee is dismissed on health grounds, the employee will be given 14 days to consider the Panel's decision, and:
 - 7.4.1. If after 14 days the employee accepts the decision or does not respond, a dismissal notice will be issued.
 - 7.4.2. If the employee wishes to challenge the medical advice given to the employer, the employee must provide additional information within 14 days. The Capability Panel will then meet the employee to review the situation and
 - i. decide whether to confirm the dismissal on medical grounds
 - ii. if the Panel is satisfied that the employee's incapability is not due to permanent ill health, issue a final warning and provide further training within a specified period.
- 7.5. Where the employee is given a final warning under 7.2.3 above, training and support will be provided during the specified period. At the end of the period a Final Capability Review Interview will be held. If the employee's performance is still unsatisfactory, the Panel will confirm the dismissal of the employee on grounds of lack of capability.
- 7.6. A letter confirming the details of the interview will be sent to the employee within seven days of the interview and a copy placed on the employee's personal file.

8. Appeals

- 8.1. An employee may appeal to the Chair of the Management Committee against any capability action within seven days of the Capability Interview. The appeal must be in writing and state clearly the grounds for the appeal.
- 8.2. The Appeal Panel hearing must be held within 14 days of the receipt of the appeal letter. The Personnel Adviser will also be present.
- 8.3. The employee must be given at least 7 days' notice in writing of the date, time and location of the Appeal Panel. The notice will also state the names of the panel members and the right to representation.
- 8.4. The Appeal Panel may uphold the appeal or confirm the decision of the interview.
- 8.5. A letter confirming the decision of the Appeal Panel will be sent to the employee within seven days of the hearing and a copy will be placed on the employee's personal file.

9. Suspension

- 9.1. Where there is a major lack of capability and it is not practicable to find duties within the current scope of an employee's capability, an employee may be suspended from work pending a capability interview.
- 9.2. Suspension is a neutral act and in no ways prejudices the outcome of the hearing.
- 9.3. Suspension will be on full pay and the employee will be given immediate written confirmation of the decision.

10. Miscellaneous

- 10.1. Detailed notes should be kept of any interviews relating to a capability process. Accurate minutes must be kept of Stages 2 and 3 interviews and any Appeal hearings. It may be advisable to ask an outside person to act as Minute Secretary.
- 10.2. Days in the time-scale refers to calendar days.