

# POLICY AND PROCEDURE



SoLO  
Life  
Opportunities

38 Walnut Close  
Chelmsley Wood  
Birmingham  
B37 7PU

Charity No. 1102297  
England Company No.  
5025939

## Capability

### INTRODUCTION

SoLO works within a set of values that underpins the way in which it supports its staff to achieve, have a positive work experience and to improve their performance when it is having a detrimental effect on both the organisation and themselves.

It is recognised that an employee's work performance and efficiency can be affected by a wide range of factors both related to the workplace and to their life outside of work. Health may also play an important part in this. The point of having a Capability Policy is for SoLO Life Opportunities (SoLO) to be able to address any unsatisfactory work performance as soon as possible, and to offer what support it can to employees to enable performance to be improved. It should be noted that this Capability Policy is intended to link with SoLO's Disciplinary Procedure where necessary.

SoLO recognises that matters relating to work performance can be sensitive and it will endeavour to treat staff with respect and courtesy in using this Policy.

SoLO also recognises that all employees need clear standards and targets, and these should be implemented from the outset of employment and updated regularly as required. An employee's probationary period is also intended to clarify standards and performance requirements, and this may be extended if there are concerns about an employee's capability. All employees should have up-to-date job descriptions, and all job descriptions should be thoroughly reviewed during Probationary Reviews and Annual Appraisals, and when an employee leaves. If there has been a breakdown in this procedure, it is the responsibility of line managers to address the situation as soon as possible and to rectify it via honest discussion with the employee concerned.

## **1 POLICY STATEMENT**

- 1.1 The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
- 1.2 It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at a hearing before any formal action is taken.
- 1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary any parts of this procedure, including any time limits, as appropriate in any case.

## **2 WHO IS COVERED BY THE POLICY?**

This procedure applies to all employees (regardless of length of service) and volunteers. It does not apply to agency workers or self-employed contractors.

## **3 WHAT IS COVERED BY THE POLICY?**

This policy is used to deal with poor performance. It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases reference should be made to the appropriate SoLO policy or procedure.

## **4 IDENTIFYING PERFORMANCE ISSUES**

- 4.1 In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file, and used as a development tool. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help:
  - 4.1.1 clarify the required standards;
  - 4.1.2 identify areas of concern;
  - 4.1.3 establish the likely causes of poor performance and identify any training needs; and/or
  - 4.1.4 set targets for improvement and a time-scale for review.

- 4.2 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross **misconduct**, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.
- 4.3 If there are concerns about an individual's performance, an assessment will be undertaken to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing personnel file including any appraisal records, gathering any relevant documents, monitoring the work and, if appropriate, interviewing the individuals (and their colleagues/managers as appropriate) confidentially regarding their work.

## **5 DISABILITIES**

- 5.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to the individual's working arrangements, including changing their duties or providing additional equipment or training. There may also be consideration to making adjustments to this procedure in appropriate cases.
- 5.2 If the staff member wishes to discuss this or inform of any medical condition they consider relevant, they should contact their line manager.

## **6 CONFIDENTIALITY**

- 6.1 The aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 6.2 The staff member, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 6.3 The staff member will normally be told the names of any witnesses whose evidence is relevant to their capability hearing, unless there is good reason to believe that a witness's identity should remain confidential.

## **7 NOTIFICATION OF A CAPABILITY HEARING**

- 7.1 If it is considered that there are grounds for taking formal action over alleged poor performance, the staff member will be required to attend a capability hearing. They will be notified in writing of the concerns over their performance, the reasons for those concerns, and the likely outcome if a decision is made after the hearing that the individual's performance has been unsatisfactory. Also included, where appropriate:
- 7.1.1 A summary of relevant information gathered as part of any investigation.
  - 7.1.2 A copy of any relevant documents which will be used at the capability hearing.
  - 7.1.3 A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information will be given as possible while maintaining confidentiality.
- 7.2 Written notice of the date, time and place of the capability hearing will be given. The hearing will be held as soon as reasonably practicable, but the staff member be given a reasonable amount of time to prepare their case based on the information they have been given.

## **8 RIGHT TO BE ACCOMPANIED AT HEARINGS**

- 8.1 The staff member may bring a companion to any capability hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. They must tell the manager conducting the hearing who the chosen companion is, in good time before the hearing.
- 8.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 8.3 If the choice of companion is unreasonable they may be required to choose someone else, for example:
- 8.3.1 if in the organisation's opinion the companion may have a conflict of interest or may prejudice the hearing; or
  - 8.3.2 if the companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

- 8.4 The staff member may, at the organisations discretion, be allowed to bring a companion who is not a colleague or union representative (for example, a member of their family) where this will help them overcome a particular difficulty caused by a disability, or where they have difficulty understanding English.

## **9 PROCEDURE AT CAPABILITY HEARINGS**

- 9.1 If the staff member or their companion cannot attend the hearing they should inform the manager organising the hearing immediately so that they can arrange an alternative time. They must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If they fail to attend without good reason, or are persistently unable to do so (for example, for health reasons), a decision may be made based on the available evidence.
- 9.2 The hearing will normally be held by the individual's line manager. They may bring a companion with them to the hearing (see paragraph 8). Their companion may make representations, ask questions, and sum up their case, but will not be allowed to answer questions on their behalf. They may confer privately with their companion at any time during the hearing.
- 9.3 They may ask relevant witnesses to appear at the hearing, provided they give sufficient advance notice to arrange their attendance. They will be given the opportunity to respond to any information given by a witness. However, they will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, it is decided that a fair hearing could not be held otherwise.
- 9.4 The aims of a capability hearing will usually include:
- 9.4.1 Setting out the required standards that it is believed that the individual may have failed to meet, and going through any relevant evidence that has been gathered.
  - 9.4.2 Allowing the individual to ask questions, present evidence, call witnesses, respond to evidence and make representations.
  - 9.4.3 Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.

- 9.4.4 Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
  - 9.4.5 Where appropriate, discussing targets for improvement and a time-scale for review.
  - 9.4.6 If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.
- 9.5 A hearing may be adjourned if it is necessary to gather any further information or give consideration to matters discussed at the hearing. The individual will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 9.6 The individual will be informed in writing of the decision and the reasons for it, usually within one week of the capability hearing. Where possible the line manager will also explain this information to the individual in person.

## **10 STAGE 1 HEARING: FIRST WRITTEN WARNING**

- 10.1 Following a Stage 1 capability hearing, if it is decided that the individual's performance is unsatisfactory, they will be given a first written warning, setting out:
- 10.1.1 The areas in which they have not met the required performance standards.
  - 10.1.2 Targets for improvement.
  - 10.1.3 Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
  - 10.1.4 A period for review.
  - 10.1.5 The consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 10.2 A first written warning may be authorised by the Line Manager
- 10.3 The warning will normally remain active for six months unless it is determined that the issue demands a longer period of review,

after which time it will be disregarded for the purposes of the capability procedure.

- 10.4 After the active period, the warning will remain permanently on the individual's personnel file but will be disregarded in deciding the outcome of future capability proceedings.
- 10.5 The individual's performance will be monitored during the review period and the outcome will be provided in writing:
  - 10.5.1 if their line manager is satisfied with their performance, no further action will be taken;
  - 10.5.2 if their line manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
  - 10.5.3 if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **11 STAGE 2 HEARING: FINAL WRITTEN WARNING**

- 11.1 If the individual's performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while the first written warning is still active, it may be decided to hold a Stage 2 capability hearing. Written notification will be sent to the individual as set out in paragraph 7.
- 11.2 Following a Stage 2 capability hearing, if it is decided that the individual's performance is unsatisfactory, they will be given a final written warning, setting out:
  - 11.2.1 the areas in which they have not met the required performance standards;
  - 11.2.2 targets for improvement;
  - 11.2.3 any measures, such as additional training or supervision, which will be taken with a view to improving performance;
  - 11.2.4 a period for review; and
  - 11.2.5 the consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 11.3 A final written warning may be authorised by a Senior Manager

- 11.4 A final written warning will normally remain active for 12 months. After the active period, the warning will remain permanently on the individual's personnel file but will be disregarded in deciding the outcome of future capability proceedings.
- 11.5 The individual's performance will be monitored during the review period and the will be written to of the outcome:
  - 11.5.1 if their line manager is satisfied with their performance, no further action will be taken;
  - 11.5.2 if their line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
  - 11.5.3 if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

## **12 STAGE 3 HEARING: DISMISSAL OR REDEPLOYMENT**

- 12.1 It may be decided to hold a Stage 3 capability hearing if there is reason to believe:
  - 12.1.1 The individual's performance has not improved sufficiently within the review period set out in a final written warning;
  - 12.1.2 The individuals performance is unsatisfactory while a final written warning is still active; or
  - 12.1.3 The individual's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

Written notification of the hearing will be sent out as set out in paragraph 7.

- 12.2 Following the hearing, if it is found that the individuals performance is unsatisfactory, a range of options may be considered including:
  - 12.2.1 Dismissal of the individual.
  - 12.2.2 Redeploying them into another suitable job at the same or a lower grade.
  - 12.2.3 Extending an active final written warning and setting a further review period (in exceptional cases where it is believed a substantial improvement is likely within the review period).

- 12.2.4 Giving a final written warning (where no final written warning is currently active).
- 12.3 The decision may be authorised by Senior Manager who may refer to CEO.
- 12.4 Dismissal will normally be with full notice or payment in lieu of notice, unless the individuals performance has been so negligent as to amount to gross misconduct, in which case they may be dismissed without notice or any pay in lieu.

### **13 APPEALS AGAINST ACTION FOR POOR PERFORMANCE**

- 13.1 If the individual feels that a decision about poor performance under this procedure is wrong or unjust they should appeal in writing, stating their full grounds of appeal, to the SoLO Management Board within one week of the date on which they were informed in writing of the decision.
- 13.2 If they are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful they will be reinstated with no loss of continuity or pay.
- 13.3 If they raise any new matters in their appeal, it may be necessary to carry out further investigation. If any new information comes to light the individual will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. They will be given a reasonable opportunity to consider this information before the hearing.
- 13.4 They will be given written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after they receive the written notice.
- 13.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the organisation's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 13.6 Where possible, the appeal hearing will be conducted by a Trustee of the SoLO Management Board who has not been previously involved in the case. The individual may bring a companion with them to the appeal hearing (see paragraph 8).

- 13.7 A hearing may be adjourned if there is a necessity to gather any further information or give consideration to matters discussed at the hearing. The individual will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 13.8 Following the appeal hearing one of the following outcomes will occur:
- 13.8.1 confirm the original decision;
  - 13.8.2 revoke the original decision; or
  - 13.8.3 substitute a different penalty.
- 13.9 The individual will receive a written copy the final decision as soon as possible following the appeal hearing. Where possible the trustee will also explain this to them in person. There will be no further right of appeal.

#### **LINKED WITH**

- Stress management
- Disciplinary