

## UK - CAPABILITY POLICY

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**Responsibility for this document:**

The functional responsibility for the development, review and maintenance of this document rests with the P&O Presidents with UK responsibilities.

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## **1 Purpose and Scope**

The Company is committed to a high performance culture, one where everyone can achieve their best. Capability refers to an employee's ability to perform the work expected of them, to a required standard. This Policy refers specifically to capability where an employee's lack of knowledge, skill or ability affects their ability to perform the work they have been employed to do.

This Policy applies to all UK employees. This Policy will be superseded by the content of any collective bargaining agreements, site agreements or individual contracts of employment, in the event of there being any difference(s) in arrangements. This Policy does not form part of an employee's terms and conditions of employment and is not contractual. The Company reserves the right to amend this Policy from time to time.

## **2 Roles and Responsibilities**

The following roles and responsibilities apply within the context of this Policy:

### **2.1 Employees**

Employees are responsible for ensuring they act in compliance with this Policy.

### **2.2 Line Managers**

Line Managers are responsible for ensuring the application and adherence to this Policy.

### **2.3 P&O**

P&O will provide support and guidance for the application of this Policy.

## **3 Capability Policy**

The purpose of this Policy is to support, help and encourage underperforming employees to achieve and maintain expected levels of performance, where the likely cause of under-performance is not connected with the employee's conduct. Where conduct has been identified as the likely cause of under-performance, the matter will be progressed in accordance with the Company's Disciplinary Policy.

### **3.1 Investigation**

If the Company has concerns about an employee's performance, an employee's line manager will promptly undertake an assessment to decide if there are grounds for taking formal action under this Policy. The assessment may involve reviewing the employee's personnel file, monitoring the employee's work and, if appropriate, interviewing the employee and/or other individuals confidentially regarding the employee's work.

If, after examination of the facts, there is a satisfactory explanation or reason for the poor performance, the decision may be that no performance management action will be taken under this Policy. In this case consideration will be given as to whether training, counselling or re-organisation of duties and responsibilities is required to support the employee.

If following investigation, the findings are that the employee's performance has been unsatisfactory, the line manager may consider informal resolution or in more urgent or serious cases a formal capability meeting may be arranged in line with this Policy.

### **3.1.1 Informal Resolution**

Line managers will aim to support improvements in an employee's performance through informal private discussions reviewing performance, clearly stating the areas of work which are not meeting the required standards of delivery. They will give direction on areas of improvement as part of guidance, feedback and support. These discussions should aim to ensure the employee understands the required standards of performance and identify whether there are any mitigating circumstances which may have been the cause of the performance issue.

A performance improvement plan will be agreed, identifying performance objectives and timescales for improvement. Timescales for improvement are to be reasonable in the circumstances. Remedial actions such as coaching or training will also be considered to enable objectives to be achieved. The employee will also be informed of what will happen should the standards not be met.

A file note capturing the key points of any discussions is to be sent to P&O and will be placed on the employees file.

### **3.1.2 Disability and Performance Management**

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 an employee's working arrangements, including changing the employee's duties or providing additional equipment or training. The Company may also consider making adjustments to this procedure in appropriate cases.

An employee should inform the Company of any medical condition or disability which they consider may be relevant.

### **3.1.3 Confidentiality**

The Company's aim is to deal with capability matters sensitively and with respect for the privacy of individuals involved. All employees must treat in a confidential manner, any information communicated to them in connection with a capability investigation or meeting.

In exceptional circumstances, the Company may determine that evidence given by individuals is to remain confidential. Where such confidentiality is deemed necessary, this will be explained to the employee and an appropriate summary of the evidence will be given to them.

If a third-party, usually a colleague providing feedback wishes to remain anonymous the Company will explore their reasons for this and then decide whether their feedback/evidence is to be disregarded or considered as holding less weight than evidence from named sources. If such anonymous evidence is used, the Company will seek to corroborate it with other evidence where possible.

### **3.1.4 Suspension with Pay**

In the event of serious under performance, for example where performance could pose a risk to safety, Company reputation or have a financial impact, or where otherwise felt appropriate

to do so, the employee may be suspended while the investigation and any subsequent procedure is carried out.

The Company has the right to suspend with pay and benefits where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before a capability meeting, or if there is a potential risk to the employee, business or other employees or third parties in allowing the employee to remain at work.

Any period of suspension with pay and benefits is not a punishment and therefore is not in itself a form of capability action. The company aims to ensure any period of suspension is as brief as practicably possible and is never used as a sanction against the employee prior to a capability meeting and decision.

The employee will be advised in writing of the suspension and the reason. During this time the employee is not to visit the Company's premises or contact any of the Company's clients, customers, contractors or staff unless they have been authorised in writing to do so by the Company. The Company will maintain regular contact with the employee throughout this period.

### **3.2 Formal Capability Policy**

P&O must be informed prior to any formal capability action being considered and will be involved in the application of the Policy. The Policy may be implemented at any stage in accordance with the nature of the employee's performance issues. Where performance concerns are sufficiently serious, there are no mitigating circumstances and no improvement is made after the initial review period, the Policy may be escalated to Stage 4.

At all stages of the formal capability process the employee will be invited, in writing, to attend the capability meeting by their line manager, who will be supported by P&O to advise on process. Employees will be given at least 3 working days notice of the meeting where reasonably practicable to enable them to make any appropriate arrangements. The letter will contain details of the unacceptable performance, supporting documentation, including details of previous formal discussions and improvement plans. The letter will also advise the employee of their right to be accompanied by either a trade union representative or work colleague.

The employee must make every effort to attend the capability meeting, and failure to attend without good reason may be treated as misconduct. If the employee fails to attend without good reason or is persistently unable to do so (for example, for health reasons) a decision may have to be taken based on the available evidence including any written representations the employee has made.

A capability meeting may be adjourned at any stage of the process if it is felt that further information needs to be gathered, or consideration given to matters discussed at the capability meeting. Employees will be given a reasonable opportunity to consider any new information obtained before the capability meeting is reconvened.

Following the meeting, the employee will be provided, in writing, with a record of the meeting clearly defining any discussion and agreement on the performance objectives, which may include the performance improvement plan, timescale for delivery, feedback on progress and the consequences for not attaining the defined level of performance improvement. Where applicable the agreed date of the meeting for the next stage of the process will be confirmed in this record. The employee will be asked to sign this letter agreeing that the record is accurate

and confirming their understanding and acceptance of the arrangements and the Company's expectations.

Where there are active capability warnings on the employee's record the Company may deem it reasonable to take these into account when deciding the appropriate level of response to any under performance and treat such warnings to be cumulative.

### **3.2.1 Stage 1 – Capability Meeting**

Where an employee fails to perform their role to the agreed satisfactory level, and where informal discussions have not resolved the issue, the employee will be invited to attend a formal capability meeting with their line manager, supported and advised by P&O to discuss the areas of unsatisfactory performance and to advise the employee of the required level of improvement.

Any mitigating circumstances which may have been the cause of the performance issue will also be discussed. A performance improvement plan may be agreed, identifying performance objectives and timescales for improvement. Remedial actions such as coaching or training will also be considered to enable objectives to be achieved. The employee will be informed of what will happen should the standards not be met.

### **3.2.2 Stage 2 – Capability Review Meeting**

The employee will be invited, to attend a formal capability review meeting with their line manager and P&O where the line manager will discuss the employee's overall progress. The employee will be given the opportunity to put their side of the case forward and provide any mitigating circumstances. A review of any remedial action taken by the Company will be carried out to ensure it is appropriate. The meeting may be adjourned to allow the line manager to investigate any matters arising from the meeting.

If the line manager considers that the problem has been resolved, and performance has returned to a satisfactory standard, the employee will be informed of this in writing, confirming that the improved level of performance must be maintained otherwise further action may be taken in accordance with this policy.

If some improvement has been made, but all objectives have not yet been met, the line manager may decide to extend the current review period. In such cases, the employee will be notified of the extension in writing. The letter will also remind the employee of the potential consequences of failure to achieve a significant and sustained improvement. Additional support such as training or coaching will be considered and provided where appropriate. The capability meeting will then be reconvened at the end of the review extension period.

If the employee's performance has not sufficiently improved, and there is still evidence of incapability, despite the provision of support and previous meetings held with the line manager, the employee may be issued with a written warning in line with the Company's Disciplinary Policy. Additional support such as training or coaching will be considered and provided where appropriate. The employee will also be invited to a second capability review meeting.

### **3.2.3 Stage 3 – Second Capability Review Meeting**

The employee will be invited, in writing, to attend the second capability review meeting with their line manager and P&O where the line manager will discuss the employee's overall

progress. The employee will be given the opportunity to put their side of the case forward and provide any mitigating circumstances. A review of any remedial action taken by the Company will be carried out to ensure it is appropriate. The meeting may be adjourned to allow the line manager to investigate any matters arising from the meeting.

If the line manager considers that the problem has been resolved, and performance has returned to a satisfactory standard, the employee will be informed of this in writing, confirming that the improved level of performance must be maintained otherwise further action, up to and including, termination of the employee's contract of employment on grounds of capability may have to be considered.

If some improvement has been made, but all objectives have not yet been met, the line manager may decide to extend the current review period. In such case, the employee will be notified of the extension in writing. The letter will also remind the employee of the potential consequences of failure to achieve a significant and sustained improvement. The matter of additional support such as training or coaching will be considered and provided where appropriate. The capability meeting will then be reconvened at the end of the review extension period.

If the employee's performance has not sufficiently improved, and there is still evidence of incapability, despite the provision of support and previous meetings held with the line manager, the employee will, in most cases, be issued with a final written warning in line with the Company Disciplinary Policy. Additional support such as training or coaching will be considered and provided where appropriate. The employee will also be invited to a final capability meeting where it may be considered to terminate their contract of employment on the grounds of capability.

### **3.2.4 Stage 4 – Final Capability Meeting**

The employee will be invited, in writing, to attend the final capability meeting with their line manager and P&O.

At the final capability meeting, the line manager will summarise the performance management concerns, performance objectives, remedial actions taken and previous capability review meetings. The employee will be given the opportunity to put their side of the case forward and provide any mitigating circumstances. The meeting may be adjourned to allow the line manager to investigate any matters arising from the meeting.

If the line manager considers that the problem has been resolved, and performance has returned to a satisfactory standard, the employee will be informed of this in writing, confirming that the improved level of performance must be maintained otherwise further action, up to and including, termination of the employee's contract of employment on grounds of capability may have to be considered.

If some improvement has been made, but all objectives have not yet been met, the line manager may decide to extend the current review period. In such cases, the employee will be notified of the extension in writing. The letter will also remind the employee that they may be dismissed if there is a failure to achieve a significant and sustained improvement. Additional support such as training or coaching will be considered and provided where appropriate. The capability meeting will then be reconvened at the end of the review extension period.

If the required improvement has still not been demonstrated then consideration will be given as to whether redeployment may be applied, or if dismissal is necessary.

### **3.2.5 Alternative Roles**

Where it is identified that the employee does not meet the required standards for their current role, but has the skills to potentially fill another position, alternative roles may be considered. Acceptance of an alternative role will be subject to the salary and terms and conditions associated with this role. Where an employee remains in the same role, but some responsibilities are removed on a permanent basis then the employee will be advised of any new salary, terms and conditions commensurate with this. Written details of the revised terms and conditions of employment will be provided.

### **3.2.6 Dismissal**

If the required improvement has not been demonstrated, redeployment is not an option or if no suitable alternative employment has been identified, then the employee may be dismissed on the grounds of capability. The employee will be advised, in writing, of the reasons for dismissal, the date of dismissal and the right of appeal against the decision made. The letter will also contain a record of the meeting. The employee will be asked to sign the letter agreeing that the record is accurate and confirming that they understand and accept the arrangements.

Dismissal will normally be with full notice or payment in lieu of notice, unless the employee's performance has been so negligent as to amount to gross misconduct, in which case an employee may be dismissed without notice or payment in lieu.

### **3.2.7 Appeal**

An employee, who wishes to appeal against a capability decision, is to inform the relevant person named in the letter within 7 calendar days of having received the written notification of the decision or, if working conditions prevent this, as soon as is practicable.

The appeal letter must state the grounds for the appeal including any specific points the employee wishes to be taken into account and confirm whether they are appealing against the finding that their performance was unsatisfactory, or the level of sanction imposed.

The Company will invite the employee, in writing, to attend an appeal meeting with an appropriate manager and P&O. The Company will seek to hold the meeting within 7 calendar days of being informed of the employee's wish to appeal. The employee must take all reasonable steps to attend the meeting. The manager hearing the appeal will not previously have been involved in the process and where reasonably practicable will normally be of higher authority than the manager who made the decision.

An appeal meeting may be adjourned at any stage of the process if it is felt that further information needs to be gathered, or consideration given to matters discussed at the appeal meeting. Employees will be given a reasonable opportunity to consider any new information obtained before the appeal meeting is reconvened.

After the appeal meeting, the employee will be informed of the outcome in writing, normally within 10 calendar days of the appeal meeting being held. The appeal decision is final.

If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful the employee will be reinstated with no loss of continuity of service or pay.

### 3.3 The Right to Be Accompanied

An employee has the right to be accompanied at any capability meeting (including an appeal meeting) by a companion who is either a work colleague or a trade union official certified in writing by their union as being qualified to act as a companion. The employee must notify the Company of their chosen companion, in good time before the meeting.

If an employee's choice of companion, may have a potential conflict of interest or may prejudice any capability meeting and or appeal meeting in the Company's view, this will be explained, and the employee may be asked to choose someone else to accompany them.

A representative has the right to explain and sum up the employee's case, respond to any views expressed at the meeting and confer with the employee during the meeting. A representative may not answer questions on behalf of an employee, address the meeting if the employee does not wish the companion to do so or prevent the manager from explaining the Company's case.

If the employee or companion cannot attend on the date the employer has set for the meeting/appeal, the employee is to propose an alternative time for the meeting. The alternative date must be reasonable and fall within 7 calendar days (or longer if both the Company and the employee agree) of the originally proposed date. The Company may ask an employee to choose a different companion if they are not available within 7 calendar days (or such time as agreed by the Company) of the originally proposed date.

If the companion fails to attend the meeting without reasonable explanation, then the Company will not be under any obligation to rearrange the meeting and any rearrangement will therefore be at the Company's discretion.

An individual who agrees to accompany an employee will not suffer any detriment for acting in such a capacity and will be entitled to a reasonable amount of time within normal working hours to fulfil that responsibility.

### 3.4 Trade Union Representatives and Capability Action

If an employee who is an accredited representative of a Trade Union recognised by the Company for collective bargaining purposes is suspected of under-performing, the Company will not usually take action under this Policy (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Company has had a chance to discuss the matter, with the prior agreement of the employee, with a full-time official of that Trade Union.

## 4 Definitions

The following terms are used within this document.

Term	Definition
P&O	People and Organisation
The Company	References to the "Company" in this Policy are references to the employee's current employer.
Company Premises	All owned, operated, leased by or otherwise in control (in whole or in part) of the Company and for the avoidance of doubt, includes

Term	Definition
	designated check-in points for travelling to and from offshore and abroad and shall include any transportation used for Company business.
Conduct	An employee's behaviour in the workplace
Gross Misconduct	Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship (express or implied) between the employee and the Company and includes misconduct which, in the Company's opinion, is likely to prejudice the Company's business or reputation or irreparably damage the working relationship and trust between the Company, the employee and any other Third Party.
Sanction	Is a punishment imposed on an employee as a result of unsatisfactory performance or misconduct.

## 5 References

Document title	Document no.
UK Disciplinary Policy	HRM-PLD-100019
UK Sickness Absence Policy	HRM-PLD-100021

## 6 Revision History

Rev no.	Rev date	Summary of changes
0	14-May-2019	Issued for UK Harmonisation and will supersede UK Capability Policy HRM-PLS-1035 and UK Performance Improvement Procedure HRM-PRO-100167