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1 Policy Statement

At Viewpoint our people make great things happen.

We believe that Viewpoint staff provide a unique service and want our people to feel excited and engaged about working with us. To ensure we provide a positive working environment for all, we have introduced this policy for those occasions when members of staff do not perform their duties to an acceptable standard.

Our aim is to always resolve things amicably and informally but when this is not possible a formal procedure is available.

This policy is to provide reasonable instruction, training, supervision and support to our employees to enable required performance standards to be met. There may however be occasions when it is necessary to deal with concerns about an employee's ability in terms of performance. This policy and procedure sets out our approach to dealing with capability issues where an employee is *not able* to carry out their duties to an acceptable standard, or is *not able* to follow legitimate work requirements because of a lack of skill or ability.

2 Aim

The purpose of this policy and procedures is to provide a framework within which we can try to identify reasons for a failure in performance and, wherever possible, help and encourage employees to achieve and maintain acceptable standards by dealing fairly and reasonably with concerns about ability in terms of performance.

3 Legislation/related policies

Every case of poor work performance and capability will differ depending on the circumstances and the individual. Whilst capability is not usually considered to be a conduct or behaviour issue, this policy should be read in conjunction with the Disciplinary Policy and Procedure.

4 Scope

This policy applies to all Viewpoint employees who have successfully completed their probationary period, including those working on fixed-term contracts. Employees in their probationary period are covered by the separate probation process as specified in our contracts of employment.

In cases where an employee's attendance levels are unacceptable, or where health reasons prevent an employee from being able to carry out their duties to an acceptable standard or to return to work, these issues will be

dealt with under the Absence Management Policy and Procedures. Cases where persistent short-term absence is a factor will be dealt with under both the Absence Management and Disciplinary policies and procedures.

There will also be occasions when an employee has acted inappropriately or has not completed all the tasks required to follow legitimate work requirements; these issues will be dealt with under the Disciplinary Policy and Procedure.

This policy does not form part of any employee's contract of employment and it may be amended at any time.

5 Compliance & Support

Any line manager embarking on the Capability procedure will be required to take advice from HR and keep their Head of or Director informed to ensure the process is followed fairly and objectively.

Commitment to Employees

- A copy of this policy and procedures shall be made available to any employee involved in a capability matter.
- Viewpoint will ensure that any employee involved in a formal capability procedure is made aware of their statutory right to be accompanied by a JCC representative, work colleagues or independent trade union representative.
- Viewpoint will ensure that there is a reference copy of this policy and procedure accessible on the Viewpoint Intranet and with HR at all times.
- Viewpoint will endeavour to update this policy and procedure regularly in accordance with best practice.
- Changes to this policy will be notified to all employees.

Commitment to Managers

- All line managers receive training on this policy and procedure.
- All managers are made aware when this policy and Procedure change, arranging further training as appropriate.

Principles of the Policy:

This Capability Policy and Procedure applies to all employees and each employee should familiarise themselves with their provision by reading these documents. In addition, all managers must also read the Capability Guidance for Managers.

6 Monitoring & Evaluation

Viewpoint's Capability Policy and Procedures, will be fair, reliable, robust and auditable, i.e. capable of scrutiny.

Viewpoint is committed to providing equality and fairness for all of our people and we will not discriminate on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation, or any other protected characteristic.

Viewpoint will ensure our policy and procedures are reviewed by an external professional law provider to check legal compliance and fairness.

Procedures in support of the Capability Policy

1 Process

The line manager will indicate any concerns relating to the employee's performance as part of the one-to-one process; consider whether this is due to inadequate instruction, training, supervision or some other reason; and discuss with the employee what action and improvement is considered necessary. Any actions and improvements agreed will be outlined in the employee's regular one to one meetings and personal development plans.

Each instance of poor performance should be managed according to its own merits, potentially requiring a different level of support. The time-scales set by the employee's line manager will depend on the circumstances. Consideration may be given to the following:

- The individual (e.g. employee's working hours);
- Circumstances (e.g. employees who have recently changed roles);
- Gap (e.g. the amount of improvement required impacts on the amount of time needed to demonstrate this improvement);
- Risk (e.g. the timescale within which improvement is required may be limited if a clinical, technological, financial or organisational risk is posed);
- Impact (e.g. seniority of the position).

If at any stage of the capability process the employee feels the facts presented are incorrect, the process is unfair or new information has come to light which needs to be considered, then the employee will have the right to raise concerns within the capability procedure. These representations can be made during the formal capability meetings or at the appeal stage.

2 Informal Stage

Supervising and monitoring an employee's performance is an important part of day to day management responsibilities. The employee's manager may want to have an informal discussion with the employee in order to aid improvement of the employee's performance; regular one-to-one meetings provide the opportunity for the employee and manager to raise any concerns about the employee's work and identify any learning needs, or areas where additional support may be required.

If the employee's manager talks to the employee about concerns or problems at an early stage and makes clear what is expected of the employee in terms of performance through open and constructive discussion, the need to take formal capability action may be avoided. Any advice or instruction that the manager may give the employee is not formal capability action, but this will be noted on records of the employee's one-to-one meetings and/or on the employee's personnel file and will be referred to if formal action becomes necessary.

Often concerns about performance can be resolved informally and the employee will normally be given informal guidance before formal action is taken. However, there may be circumstances when informal action is not appropriate – e.g. cases which present a serious risk.

Advice should be sought from HR to support the informal stage process.

Bypassing the Informal Stage

Whilst this should be the exception rather than the rule, there are circumstances whereby it is justifiable to bypass the informal stage. Examples of such circumstances are listed below:

- Clinical Risk (where serious errors have / could occur).
- Previous intervention (recorded meetings and actions, concerns explained and time given to improve i.e. Informal stage in all but name).
- Position of Authority (where the poor performance could, given the seniority of the individual, have potentially severe effects on the team / organisation).

Advice must be sought from HR prior to the manager bypassing the Informal stage, with the manager being able to justify this measure.

3 Formal Capability Action

Grounds for formal action are where an employee fails or is unable to carry out their duties to an acceptable level of performance, or fails to follow legitimate work requirements because of a lack of skill or ability. It is essential therefore that the employee is aware of and understands the standards expected and required.

The formal stages of the Capability Procedure mirror the formal stages of Viewpoint's Disciplinary Policy and Procedure, to ensure fairness, consistency and legal compliance. The Disciplinary policy and procedure should therefore be read in conjunction with this policy for additional procedural details. Further information will also be available in the Capability Procedure Guidelines for Managers.

HR will provide professional advice and guidance about the formal capability procedure whenever required.

The employee will have the right to be accompanied at any formal capability interview by a JCC representative, work colleagues or independent trade union representative. If the employee's chosen companion is unable to attend, an alternative meeting will be re-scheduled within 5 working days of the original date proposed.

Where the potential outcome could be dismissal, the employee will be advised of this in advance. The employee has the right of appeal at each stage of the procedure. Decisions on all formal action taken under this policy will be confirmed in writing by the manager chairing the meeting.

3.1 Stage 1 – formal capability interview

If the employee has received informal guidance but is still failing or is unable to meet the required standards of performance, or if informal guidance is considered inappropriate, the employee will be invited to attend a formal capability interview held by the employee's line manager. The employee will be given at least 3 working days' notice of the formal capability interview, which will include the time, date, place of the meeting and the performance issue(s) to be discussed with the employee, which the employee will be aware of as part of the employee's one to ones and performance development reviews.

The purpose of the first formal capability interview is to:

- draw the employee's attention to the concerns and/or problems about the employee's performance;
- listen to the employee's views on the employee's performance and any circumstances or reasons that may be affecting the employee's performance and which may explain the employee's failure to meet required standards;
- explain exactly what is expected of the employee;
- make constructive suggestions to encourage the employee to improve performance;
- identify any specific learning and development or support needs;
- set specific objectives and reasonable timescales for achieving them;
- identify a colleague to provide support, guidance and supervision (if appropriate and possible);
- discuss how and at what intervals the employee's performance will be monitored;
- assess whether an improvement is likely;
- consider whether we can offer the employee suitable alternative employment where appropriate;
- create a Formal Improvement Action Plan, setting out objectives and timescales required for improvement;
- decide whether the employee's failure to achieve an acceptable performance standard warrants issue of a first written warning;
- warn the employee that if the employee's performance continues to be unsatisfactory, the employee's employment may be at risk.

The employee will be informed of what improvements in the employee's performance are required and, where appropriate, a time limit for improvement. These will be set out in a Formal Improvement Action Plan a copy of which will be given to the employee.

The employee's line manager may also decide to issue a first written warning at this stage; if so, this will be confirmed in writing and will state the reasons for concern about the employee's performance. The employee will have the right to appeal against this decision.

The warning will be live for 12 months.

Viewpoint reserves the right to dismiss an employee following a first formal capability interview in situations where it is clear that there is little likelihood of achieving the required standards within an acceptable period of time, or where the required additional training and support will be impracticable.

The employee will be given prior notice, in writing, of dismissal as a potential outcome. Viewpoint will take all information into account before making a decision. The meeting will be chaired by a manager with the authority to dismiss and the employee will have the right of appeal.

According to the formal improvement action plan (at the end of the agreed timescale of within which improvement is required) the employee can expect to receive one of the following outcomes:

- Performance has improved to required standard (therefore remove from the Formal Improvement Action Plan).
- Performance has improved but not yet meeting required standard (therefore extend the review period).
- Performance has not improved at all or sufficiently (therefore escalate to next stage).

Stage 2 of the procedure will be invoked if similar concerns or issues about the employee's performance arise within one year of any formal capability action.

3.2 Stage 2 – formal capability interview

If after Stage 1 and/or a first written warning the employee's performance continues to fail to meet the requirements of the employee's formal improvement action plan, or where concerns around the employee's performance are so serious and/or pose an unacceptable risk, a more senior manager than the manager at stage 1, where this is possible, will invite the employee to attend a formal capability interview under Stage 2 of the Capability Procedure.

At the second formal interview, the following will be discussed:

- the areas or concerns about the employee's performance that continue to exist;
- what action has been taken towards the Formal Improvement Action Plan – and what further action is necessary in order to meet

- the required improvements in performance;
- assess whether an improvement is likely;
- listen to the employee's views on the employee's performance and any circumstances or reasons that may be affecting the employee's performance and which may explain the employee's failure to meet required standards.

At this second formal interview, it may be decided:

- that the employee needs further training;
- to extend the monitoring period;
- to continue or revise any arrangements for support, guidance and supervision;
- to issue the employee with a final written warning and revise the employee's improvement plan, or;
- to end the employee's employment.

If the employee has failed to respond adequately to a first formal warning, or if the employee's performance is considered so serious as to warrant the issue of only one written warning before dismissal is considered, then this may result in the issue of a final written warning.

If the employee is issued with a final written warning, this will be confirmed in writing and they will be given a copy of the revised Formal Improvement Action Plan. It will state the concerns and issues with the employee's performance; specify the standards required; the improvements needed; and, where appropriate, a time limit for improvement.

The warning will be kept on the employee's personnel file and the employee's performance will continue to be monitored in line with the revised improvement plan. The warning will be live for 12 months.

If the decision is to terminate the employee's employment, this will be confirmed in writing, together with the employee's right of appeal outlined.

3.3 Stage 3 – formal capability interview

However, if the employee's performance fails to improve in line with the improvement plan, the employee will be invited to a meeting with a Director with the authority to dismiss, to discuss this further. The outcome of this meeting is likely to be the employee's dismissal. However, Viewpoint will offer the employee the opportunity to present any circumstances the employee feels are relevant and which might influence this decision.

In exceptional circumstances e.g. cases of gross negligence or incompetence, Viewpoint reserves the right to move straight to the final stage of the capability procedure which may result in the employee's employment being terminated.

General Guidelines for Managers

Sometimes poor performance can be traced to a reason that indicates the problem can be solved by means other than an Improvement Action Plan or that it cannot be solved at all. On other occasions, what may appear to be a performance issue actually transpires to be something else. The following can act as a quick checklist to ensure that an Improvement Action Plan is the most appropriate process to use:

Health

There may be an underlying medical reason for the poor performance of which the employee may or may not be aware. Occupational Health can provide confidential advice should there be any concerns.

Behaviour

Some employees are perfectly competent and able to perform the role to the required standards, but for reasons of poor behaviour do not do so. In these situations a supportive process aimed at improving performance (such as a Performance Improvement Action Plan aimed at improving capability) may not be appropriate when there is a more fundamental conduct issue to be addressed. Whilst some skills are closely related (e.g. the ability to build and maintain relationships, the ability to communicate effectively), poor behaviour is a disciplinary issue and should be managed accordingly.

External Factors

If an employee is experiencing difficulties in their home life (e.g. divorce, bereavement) this can sometimes impact on performance issues such as concentration and attention to detail. This kind of situation requires a sensitive approach from the manager. An employee may themselves identify possible solutions including a temporary reduction in hours / duties. Independent confidential advice can also be provided by the Employee Assistance Program.

Challenge Poor Performance

When trying to tackle poor performance, the employee should be honest, open and constructive. Usually there will have been either informal discussions or incidents in which concerns may have already been expressed, so the meeting will rarely come as a complete surprise. Nevertheless these are still difficult meetings and may involve an element of denial and/or emotion on behalf of the employee.

It is important that meetings are structured so that the employee is clear about the desired outcomes. The manager must establish that there is a concern with the employee's performance, that it needs rectifying and that the employee needs to engage with both the manager and the process in

order for it to be successful. The manager's expectations, if fair and reasonable, represent the standards the employee must now attain. Whilst the employee may need some time for this to 'sink in' the manager must ensure a level of co-operation prior to proceeding.

Use Examples

Concerns are best demonstrated through the use of examples. The employer need not have numerous examples but should be able to explain the poor performance that the examples highlight. The employer can explain what the impact has been on the team and what would have been expected of the employee in those particular instances, and highlight how this can be achieved. During preparation the employer should ensure a written record of the examples is produced, even if this is simply a note written after the event.

From a review of the examples a pattern may emerge showing concerns in particular areas such as communication, accuracy, productivity, attention to detail or ability to understand and follow process and procedure. The Improvement Action Plan will subsequently focus on these areas, so this is an important early consideration.

When providing constructive feedback:

- Be clear, descriptive and factual
- Focus on the issue, not on the person
- Describe actual behaviour, events and actions
- Describe consequence of behaviour
- Give time to explain and aim to understand why something happened
- Find solutions together and agree on a way forward

Focus on Improvement

Having identified that the issue is one of poor performance and that an Improvement Action Plan would be of value, the employee must be clear as to what the issues are, specifically the difference between the required standards and the standards being demonstrated by the employee.

With support and guidance an Improvement Action Plan would then aim to eliminate this performance 'gap' by using a structured approach to improve the employee's performance in the required areas.