

## CAPABILITY REVIEW POLICY

**Policy Statement:** McSence Group is committed to high standards and we recognise the contribution that each individual can make to achieve the organisation's core values and purpose. Most employees are competent, effective and are able to develop through the range of opportunities offered by the group. There are, however, occasions when a significant gap may develop between the requirements of a job and an employee's performance and, if left unchecked, the situation may threaten the success of the organisation.

**All Employees:** This policy applies to all persons working for or on our behalf of the McSence Group of Companies which includes the subsidiary companies - *McSence Communication Ltd, McSence Ltd, McSence Services Ltd & McSence Workspace Ltd* in any capacity including but not limited to:

- ✚ All employees at all levels, prospective employees, agency workers, seconded workers, temporary workers, contractors/sub-contractors, clients, agents, external consultants, volunteers, members of the public, group's supply chain, third-party representatives and/or business partners who will be referred to in our Group policies as "all employees".

**The Workplace:** This policy applies to all persons working for or on our behalf of the McSence Group of Companies in any capacity at the workplace(s) as defined below which includes but not limited to:

- ✚ McSence Premises, Offices, Units, Business Park, Client's Premises, External Meeting Places, Customers' Homes, Gardens, Sheltered Housing, Whilst On-Call, On-Duty, Emergency Cover, Working from Home including On-Line Meetings, Whilst Driving in Company Time, Working Public Areas (café's, trains, coffee shops, buses etc) and will be referred to throughout this policy as "the workplace".

**Purpose:** For the purpose of this Capability Review Policy, a lack of capability is defined as *'Where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner, due to a lack of ability.'*

Such failings will be identified, and steps will be taken to improve performance through the application of this policy. Where such steps prove unsuccessful, the member of staff may have their employment terminated on the grounds of Capability. For clarification this refers to a situation where an employee is unable (capability) to carry out responsibilities or duties to an acceptable standard, rather than unwilling to do so (conduct). Situations arising where there are employee conduct issues are covered in the Disciplinary Policy.

**Roles & Responsibilities:** Line Managers will be responsible for managing performance issues at the informal and Formal Stage 1 levels of the procedures. Service managers will chair Formal Stage 2 Capability Review meetings and may be appointed as chair for Formal Stage 3 meetings if not involved in previous proceedings. A member of the Senior Management Team will normally be appointed to hear appeals where dismissal may result. On occasions where there is no manager independent of previous proceedings, a Board Member may be appointed to chair a Formal Stage 3 Capability Review meeting.

**Scope:** This procedure outlines the process for MCH to follow when addressing issues of under-performance, which have not been possible to resolve through the normal management support. It applies to all employees of McSence with the exception of:

- ✚ Employees who are subject to a period of probation, in which case this procedure will be truncated where appropriate.
- ✚ Where an employee has accepted redeployment to a post as a result of a reorganisation and the duties or requirements of the post have changed in more than a minor way, since appointment. In these circumstances the employee would be given an appropriate period of time to upskill and become proficient in their new role.
- ✚ The capability procedure excludes issues of misconduct, e.g., Deliberate, or malicious behaviour, acts of omission or acts of negligence. Such situations would be managed under the disciplinary procedure as conduct issues.

**Principles of the Policy:** This Capability Review Policy is designed to ensure the prompt and effective handling of capability and performance issues.

When dealing with capability issues, the manager should bear in mind that they are required to ensure the fair treatment of employees who become liable to action under the Capability Review procedures. They should ensure that they do not discriminate on grounds of sex, transgender, marital or civil partnership status, racial group, sexual orientation, religion or belief, disability, or age. Principles of natural justice should also be observed, and it will be ensured that matters are resolved speedily and kept confidential. In all circumstances the Capability process should commence at the informal stage unless it is a continuation of a capability issue and the process is ongoing or completed within the last 12 months.

At each stage in the procedure, an employee will be told about the performance problem and will be given an opportunity to state his or her case and improve before any action is taken. If at any stage within this procedure the performance issue relates to conduct or is related to an employee being unwilling to improve performance (conduct) the matter will then be dealt with under the Disciplinary Policy and the capability process will cease.

If the cause of poor performance is due to ill health, with the employee's permission medical advice may be sought from the employee's GP, hospital consultant and/or Occupational Health Advisor. The Procedure will be followed as below, with the necessary reasonable adjustments made.

**Reasonable Management Behaviour:** The law requires employers to act reasonably and promptly when dealing with performance issues. What is classed as reasonable behaviour will depend on the circumstances of each case, however, the core principles are as follows.

- ✦ Use procedures primarily to help and encourage employees to improve, rather than just as a way of imposing a punishment.
- ✦ Inform the employee of the deficiencies in performance and provide them with an opportunity to state their case before decisions are reached.
- ✦ Allow employees to be accompanied at formal capability review meetings. This can be by a work colleague or accredited trade union representative.
- ✦ Make sure that action is not taken until the facts of the case have been established and ensure that the actions are reasonable in the circumstances.
- ✦ Give the employee a written explanation for any action taken and make sure they know what improvement is expected.
- ✦ Give the employee an opportunity to appeal.
- ✦ Deal with issues as thoroughly and promptly as possible
- ✦ Act consistently

### **Capability Review Procedures:**

#### **Informal stage**

If there are concerns about an employee's performance, the line manager should meet with the employee to explain their concerns and state that they are addressing the individual's performance gaps '**informally**' within the Capability Procedure. This will seek to establish:

- ✦ The performance gap (this should be set out clearly with information. Note: it will often be an accumulation of events that leads to the contention of a capability problem, these should be clearly documented)
- ✦ The causes
- ✦ The impact of the poor performance
- ✦ The actions to be taken.
- ✦ Who has responsibility for the actions?
- ✦ The performance standards that are required
- ✦ The support to be given to the employee.
- ✦ A timetable for improvement against agreed objectives (this would not normally exceed a period of up to 6 weeks)

The line manager must keep notes of meetings and confirm the outcomes in writing to the employee. These notes must clearly state that this is the **Informal Stage** of the Capability Procedure.

If there is a satisfactory improvement in performance following the informal stage of this procedure, the matter will be considered resolved and the individual informed in writing of this.

In the event that the improvement is not maintained / or if a related capability issue reoccurs within 12 months, the process should move to Formal Stage 1.

### Formal Stage 1

The line manager will write to the employee, giving reasonable notice, inviting them to a **Formal Stage 1** capability review meeting to discuss the employee's performance in the job. The employee should be notified of the nature of the alleged deficiencies in performance, their right to be accompanied by either a work colleague or a recognised trade union representative and informed that, should the necessary improvements not be achieved, this could ultimately affect his/her continued employment. A copy of any documentary evidence which will be considered at the meeting will be provided to the employee in advance of the meeting. The meeting will seek to establish:

- ✚ The performance gap (this should be set out clearly with factual information. Note: it will often be an accumulation of events that leads to the contention of a capability problem, these should be clearly documented).
- ✚ The causes
- ✚ The impact of the poor performance
- ✚ The actions to be taken.
- ✚ Who has responsibility for the actions?
- ✚ The performance standards that are required
- ✚ The support to be given to the employee.
- ✚ Timetable for improvement against agreed objectives, this may include interim targets and review meetings.

Support may include but is not limited to:

- ✚ Further training or development
- ✚ Changes in the employee's duties which might improve performance.
- ✚ Assistance from other colleagues

The plan for improvement and timescales will be agreed at this meeting. The line manager must keep notes of meetings. This should then be formally documented by the manager in the form of a **first written warning** letter to be sent to the employee, detailing the areas and level of improvement required, the period of time for which the warning will remain active (from the end of the review, normally 12 months) and an appropriate review date (normally up to 6 weeks). The letter should also advise the employee of their right to appeal the decision. The warning will remain permanently on the personnel file but will be disregarded once expired in deciding the outcome of future capability proceedings.

**Review Meeting with the Line Manager:** On the date set for the review (usually up to 6 weeks later), the manager should meet with the employee, review progress, and evaluate any improvement/deterioration in performance. The line manager must keep notes of the meeting. If the performance is in line with the targets/objectives and no further action is required, then this should be acknowledged and noted in writing by the manager. A copy of this confirmation must be forwarded to the individual and also retained in the individual's personnel file. In the event that the improvement is not made/ maintained / or if the capability issue reoccurs within 12 months, the line manager should progress to the Formal Stage 2.

### Formal - Stage 2

The Formal Stage 2 capability review meeting should be chaired by a manager at the next (or equivalent) level of authority, or where there is not an appropriate manager at a more senior level, an independent manager of equivalent seniority who has not already been involved in the process.

The employee should be invited in writing, giving reasonable notice, to the Formal Stage 2 capability meeting to discuss the employee's performance in the job.

The employee should be notified of their right to be accompanied by either a work colleague or a recognised trade union representative and informed that, should the necessary improvements not be achieved, this could ultimately affect his/her continued employment. A copy of any documentary evidence which will be considered at the meeting will be provided to the employee in advance of the meeting.

The meeting will summarise the line manager's concerns about the individual's performance, outline what has previously taken place in the process, and invite the employee to state their case. The senior manager must keep notes of the meeting.

Following this meeting, the senior manager will decide on any action to be taken. The senior manager will confirm the decision in writing.

If performance is still deemed to be unsatisfactory, this letter will take the form of a final written warning letter to the employee detailing the areas of concern, the level of improvement required, the period for which the warning will remain active (from the end of the review period, normally 12 months) and appropriate review date (normally up to 6 weeks). The letter should reiterate to the employee that their job is at risk if the required level of improvement is not achieved and sustained. The letter should also advise the employee of their right to appeal the decision.

Copies of all documentation must be retained in the individual's personnel file. These notes must clearly state this is Stage 2 of the formal capability procedure. The warning will remain permanently on the personnel file but will be disregarded once expired in deciding the outcome of future capability proceedings.

**Review Meeting with the Senior Manager:** On the date set for the review (usually up to 6 weeks later), the senior manager should meet with the employee, review progress, and evaluate any improvement/deterioration in performance. The senior manager must keep notes of the meeting.

If the performance is in line with the targets/objectives and no further action is required, then this should be acknowledged and noted in writing by the senior manager. A copy of this confirmation must be forwarded to the individual and also retained in the individual's personnel file.

In the event that the improvement is not maintained, or if the capability issue reoccurs within 12 months the line manager progresses to **Formal Stage 3** of the capability review procedure.

**Formal - Stage 3 Dismissal (or alternative action): Dismissal**

On reaching the Formal Stage 3 of the procedure, a senior manager, not previously involved with the earlier stages of the process, should be nominated to chair the meeting. If it is not possible to involve a manager a Board member will be invited to chair the meeting. The Stage 3 panel should normally comprise:

- ✚ as Chair, a senior manager independent from the case or Board Member as appropriate
- ✚ one other manager
- ✚ advice will normally be sought from the company's HR Advisor.

The employee will be invited to the Formal Stage 3 capability meeting, giving reasonable notice, to discuss the alleged poor performance.

The employee, along with the panel members will be provided with a copy of any documentary evidence which will be considered at the meeting, in advance of the meeting.

The employee will be notified that the meeting will be the final stage of the capability review procedure and informed of their right to be accompanied by either a work colleague or a recognised trade union representative and advised that one of the potential outcomes of the meeting includes dismissal.

During this meeting, the employee will be given a final opportunity to make representations and provide any additional evidence not previously submitted. It will usually be the case that the line manager will present the case and the employee will have the opportunity to respond. The chair may then be able to decide after a brief adjournment having reviewed the evidence. However, it may be necessary to defer the decision pending further consideration of the evidence. In any event, the individual will be informed of the outcome in writing as soon as possible.

If the decision to dismiss is taken, the individual will be informed that they are being dismissed on the grounds of Capability. Dismissal will normally be with full notice or payment in lieu of notice.

A formal record of the meeting will be made and retained in the individual's personnel file. The decision will be communicated to the employee in writing, confirming the employee's right to appeal the decision.

**Alternative Action:** Redeployment may be considered depending upon whether there is a suitable vacancy available and the employee's ability to perform the duties. Redeployment will be discussed with the employee where appropriate but will only be pursued if the employee agrees.

Given the nature of the capability issue, a role at a lower grade might be appropriate.

If the candidate is felt to be suitable for a vacancy available at that time (or within a defined period), this redeployment will carry a probationary period (normally three months but may be more depending on the seniority of the post) reviewed on a monthly basis with training and support provided if necessary.

The terms and conditions will be appropriate to the grade of the alternative role and therefore pay protection will not apply.

If the employee fails the probation in the new role, the dismissal meeting will be reconvened and the subsequent termination of the employee's contract of employment will follow immediately. Dismissal will normally be with full notice or payment in lieu of notice.

Once probation has been satisfactorily completed in the new role, any capability issues that subsequently arise should be dealt with from the informal stage of the procedure.

Whilst the above relates to redeployment at the final stage of the capability review procedure, it is noted that this could be an option earlier in the process should a post be available, and the employee agree to the redeployment.

**Appeals Procedure:** There is no right of appeal against the outcome of the informal stage of this procedure.

If the employee wishes to appeal any of the decisions made at any other stage of the Capability Review Procedure they should appeal in writing, to the person indicated in the outcome letter, within 5 working days of receiving the written decision, stating the grounds for appeal.

The employee must stipulate their full grounds of appeal which should include one or more of the following reasons:

- ✚ new evidence that was not previously obtainable
- ✚ failure to follow the procedure.
- ✚ the level of sanction received.

The appeal will be heard by a Senior Manager, not previously involved with the case. The employee will be contacted and informed of the appeal hearing arrangements and of their statutory right to be accompanied. The appeal should be heard without unreasonable delay.

At an appeal hearing, it is not the intention to rehear the original case but to consider the individual's reasons for appealing and to decide whether the original outcome is fair and reasonable in the circumstances. MCH may seek advice from an HR consultant if the appeal is against a decision to dismiss. Notes of the appeal hearing will be recorded and retained in-line with McSence Group's GDPR policy.

Following the appeal hearing, the chair may:

- ✚ Confirm the original decision.
- ✚ Revoke the original decision, or
- ✚ Substitute a different outcome.

The person chairing the appeal must inform the employee in writing about the appeal decision and the reasons for it, as soon as possible. The decision of the Appeal hearing shall be final and there shall be no further right of appeal.

**Rights to Be Accompanied at Formal Meeting:** If an employee is required to attend a formal meeting under the capability review procedure, they are entitled to be accompanied by a colleague or Trade Union representative. This person is referred to as the 'companion'.



The employee should plan with their companion to attend and must notify the Manager convening the meeting of the name and status of the companion in advance of the meeting. If the companion is unable to attend on the date arranged for the meeting, the meeting may be postponed to a reasonable alternative time within five working days.

The companion will be permitted to address the meeting and confer with the employee, including in private. The companion will not be permitted to answer questions on behalf of the employee.

Employees attending as a companion will be entitled to take reasonable time off during working hours for the purpose of preparing and attending any meetings to support colleagues, without deduction from their pay. Employees attending as a companion will not suffer any disadvantage or victimisation as a result of supporting a colleague.

**Regulatory Body Notification:** This policy should be read in conjunction with the *Disciplinary Policy and Procedures*, where there is guidance on the requirements for notifying regulatory bodies.

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**Company Intranet – Staff Zone:** All the McSence Groups policies, procedures, handbooks are available on-line to all employees on the McSence Group’s Staff Zone Intranet via our website [Login | McSence](#)

**Compliance:** Failure to comply with the provisions of this Policy may result in Disciplinary proceedings.



*McSence Group Signatory:*

**David Maxwell | Chief Executive**

**McSence Group - McSence Communication Ltd, McSence Ltd, McSence Services Ltd & McSence Workspace Ltd**

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*Policy Amendments & Revisions: This policy will be reviewed annually and, if necessary, revised in the light of legislative or organisational changes. Improvements will be made by learning from experience and the use of an established annual review. Should any amendments, revisions, or updates be made to this policy it is the responsibility of the Company Senior Management Team (SMT) to see that all relevant employees receive notice and training if necessary.*