



Kernock Park Plants Ltd
Pillaton, Saltash
Cornwall, PL12 6RY

Tel: +44 (0) 1579 350561
Fax: +44 (0) 1579 351151

Email: info@kernock.co.uk
Web: www.kernock.co.uk

Capability Hearing Policy

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You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential. You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings held under this procedure.

NOTIFICATION OF A CAPABILITY HEARING

If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory.

In appropriate cases we shall also include the following:

- A summary of relevant information gathered as part of any investigation.
- A copy of any relevant documents which will be used at the capability hearing; and
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality

We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually 3- 7 days, to prepare your case based on the information we have given you.

You 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. You must tell the manager conducting the hearing who your chosen companion is, in good time before the hearing. 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.

We may require you to choose a different companion if, for example:

- your companion may have a conflict of interest or may otherwise prejudice the hearing; or
- if your companion works at another site and someone reasonably suitable is available at the site at which you work; or
- if your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.
- Exceptionally we may, at our discretion, allow you to bring a companion who is not a colleague or union representative (*e.g.* a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English.

PROCEDURE AT CAPABILITY HEARINGS

if you or your companion cannot attend the hearing you should inform us immediately and we will usually arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example, for health reasons), we may have to take a decision based on the available evidence.

The hearing will normally be held by your supervisor/Manager or a more senior manager. It will normally be attended by the Personnel Manager or another employee, whose role will be to take notes and to advise on procedural matters. You may bring a companion with you to the hearing (see points 5-6 above). Your companion may make representations, ask questions, and sum up your case, but they may not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

You may ask relevant witnesses to appear at the hearing, provided you give us sufficient notice to arrange for them to attend. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless we decide, exceptionally, that a fair hearing could not be held otherwise.

The aims of a capability hearing will usually include:

- Setting out the standards we believe you may have failed to meet, and going through any relevant evidence that we have gathered.
- Allowing you to ask questions, present evidence, call witnesses, respond to evidence and make representations.
- Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
- Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
- Where appropriate, discussing targets for improvement and a time-scale for review.
- If dismissal is a possibility, to establish if there is chance of you making a significant improvement within a reasonable time; and/or
- whether there is any alternative to dismissal, e.g. redeployment or demotion.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

We will inform you in writing of our decision and our reasons for it, usually within one week of the capability hearing. Where possible we will also explain this information to you in person.

STAGE 1 HEARING

if we decide after a stage 1 hearing that your performance is unsatisfactory, we will give you a first written warning, setting out:

- The area(s) in which your performance has been unsatisfactory;
- Targets for improvement;
- Any measures which we may take to try and improve your performance, e.g. additional training or supervision;
- A period for review;
- The consequences of failing to improve within the review period and/or of further unsatisfactory performance

An appropriate manager may issue a First Written Warning.

The warning will normally remain active for 6 months from the end of the review period. After this active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- if your supervisor/Manager is satisfied with your performance, no further action will be taken.
- if your supervisor/Manager is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

STAGE 2 HEARING–FINAL WRITTEN WARNING

if your performance does not improve within the review period set out in the first written warning, or if there is further evidence of poor performance while your first written warning is still active, we may decide to hold a Stage 2 capability hearing. We will send you written notice of that hearing.

If we decide after a Stage 2 capability hearing that your performance is unsatisfactory, we will give you a Final Written Warning, setting out:

- the area(s) in which your performance has been unsatisfactory.
- targets for improvement.
- any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- a period for review; and
- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

The Managing Director may issue a Final Written Warning.

A Final Written Warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- if your supervisor/Manager is satisfied with your performance, no further action will be taken.
- if your supervisor/Manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

STAGE 3 HEARING, TO CONSIDER DISMISSAL OR REDEPLOYMENT

We may arrange a Stage 3 capability hearing if we have reason to believe:

- your performance has not improved sufficiently within the review period set out in a final written warning.
- your performance is unsatisfactory while a final written warning is still active; or
- your performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

We will send you written notice of the hearing.

Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:

- Dismissing you.
- Redeploying you into another suitable job at the same or, if your contract permits, a lower, grade.
- Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
- Giving a final written warning (where no final written warning is currently active).

Only the Personnel Manager and Managing Director may chair a Stage 3 Hearing.

Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu of notice.

APPEALS AGAINST ACTION FOR POOR PERFORMANCE

if you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal, in writing, stating your full grounds of appeal, to the Managing Director within one week of the date on which you were informed in writing of the decision.

The date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light, we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will usually give you 2 to 7 days' written notice of the date, time and place of the appeal hearing. 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 our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted by a more senior manager who has not been previously involved in the case. The Personnel Manager and/or the manager who conducted the capability hearing will also usually be present. You may bring a companion with you to the appeal hearing, as you would to a disciplinary hearing.

A hearing may be adjourned if we need to gather any further information or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing, we may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.