CAPABILITY POLICY

Content

Policy Statement
1. Principles
2. Capability procedure
3. Formal process
4. Ill health
5. Accompaniment
6. Timescales
7. Appeals
8. Grievances
9. Effective date
10. Review date
11. Amendment history
**Document Control Summary**

<table>
<thead>
<tr>
<th>Title</th>
<th>Capability Policy &amp; Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Electronic file reference</strong></td>
<td>ERMS - Corporate HR/Policy Review</td>
</tr>
<tr>
<td>(network or intranet)</td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td>Issued</td>
</tr>
<tr>
<td>Version No.</td>
<td>2.1</td>
</tr>
<tr>
<td>Date of this Document</td>
<td>1(^{st}) March 2011</td>
</tr>
<tr>
<td>Author(s)</td>
<td>Corporate HR Policy Team</td>
</tr>
<tr>
<td>Approved by (Names, titles and date)</td>
<td>Corporate HR MRC Trade Union Side</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Next Review Date</td>
<td>March 2014</td>
</tr>
<tr>
<td>Equality Impact Assessment</td>
<td>August 2008</td>
</tr>
<tr>
<td>Completed in</td>
<td></td>
</tr>
<tr>
<td>Financial implications of</td>
<td>None</td>
</tr>
<tr>
<td>This version</td>
<td></td>
</tr>
</tbody>
</table>
Policy statement

The Medical Research Council (the MRC) has a responsibility for the setting and monitoring of realistic and measurable standards of performance for its employees. These standards will support the timely and professional achievement of objectives across the organisation, which in turn enable the MRC to operate and adapt effectively in its changing environments.

The MRC has a right to expect high quality performance from employees. It is committed to ensuring that the required performance standards are explained carefully to employees and to supporting employees to achieve them.

This policy sets out guidelines for the management of under-performance. It is designed to ensure that cases of under-performance are dealt with promptly, fairly and in a supportive manner with the prime objective of improving an individual’s performance to the required level. The MRC will endeavour to assist employees as far as is practicable in meeting personal development needs and organisational changes.

For the purpose of this policy, ‘capability’ refers to an employee’s skills, ability, aptitude and knowledge in relation to the job that he/she is employed to do.

This procedure is separate to the Disciplinary Procedure. The Council recognises that under-performance and incapability should not be treated as disciplinary matters unless it is determined that any failure to reach the required level of performance is caused by misconduct, for example, carelessness, negligence, lack of effort or failure to cooperate with management. Such cases will be treated under the Disciplinary Procedure.

Under-performance due to ill health will be dealt with under the Sickness Absence Management Procedure.

The MRC’s Capability Policy and Procedure (the Capability Procedure) applies to all employees who have successfully completed their probationary period. It includes those employed on temporary or fixed term contracts but excludes Visiting Workers, students or those workers provided by a third party agency.

1. Principles

1.1 All new employees will have their roles and responsibilities explained and shall be given any written guidance available and considered appropriate in relation to their area of work.

1.2 Employees will be given appropriate training and support to enable them to become familiar with their work.

1.3 Managers are responsible for the monitoring and management of the performance of those employees who report to them.
1.4 Managers will make employees aware of the standards expected of them and where these evolve over time inform them of the required changes.

1.5 All employees will have their performance reviewed, their developmental needs considered and clear objectives set on an annual basis as part of the Performance and Development Review (PDR) process.

1.6 Employees have a contractual responsibility to perform their duties to required standards and will be given all reasonable support and encouragement to do so.

1.7 Wherever possible, an approach of coaching and counselling should be adopted before formal action is taken under this procedure.

1.8 At all stages of the formal procedure, the employee has the right to be accompanied by an MRC colleague or represented by a recognised Trade Union representative.

1.9 Should an employee’s performance relapse, the MRC reserves the right to invoke the formal procedure at any point.

1.10 All discussions and written records about performance issues will be treated confidentially. Minutes of meetings should be recorded and made available.

1.11 An employee may appeal against any formal action taken against them at any stage of the formal process.

1.12 The MRC will endeavour to accommodate any reasonable adjustments or other special requirements needed by employees: for example, assistance in attending meetings, providing documentation in an alternative format.

1.13 Please note that some underperformance issues will be dealt with under the following procedures:

<table>
<thead>
<tr>
<th>TYPE OF ISSUE</th>
<th>MRC PROCEDURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance issues associated with changes in job roles and/or capability</td>
<td>Capability</td>
</tr>
<tr>
<td>Performance issue caused by Misconduct, for e.g. carelessness, negligence, lack of effort or failure to cooperate with management</td>
<td>Disciplinary</td>
</tr>
<tr>
<td>Performance issue due to ill–health</td>
<td>Sickness Absence Management</td>
</tr>
<tr>
<td>Performance issues related to scientific misconduct</td>
<td>Scientific Misconduct</td>
</tr>
</tbody>
</table>

2. Capability procedure

2.1 Informal process

2.1.1 An employee’s performance should be monitored on an ongoing basis using the PDR processes of the MRC.
2.1.2 Where there is evidence that an employee is not performing to the required standards, the area(s) of under-performance should initially be resolved, where possible, through informal dialogue between the employee and his/her manager. The MRC endeavours to deal with such issues as soon as they arise.

2.1.3 The manager should arrange an informal discussion with the individual.

2.1.4 At this meeting the manager will:

   a) Make clear the specific areas in which the individual’s performance is below expectations.
   b) Demonstrate and explain the grounds and/or evidence for this view.
   c) Explore with a view to identifying possible reasons for the under-performance.
   d) Give the individual the opportunity to explain their under-performance and to raise any concerns that he/she may have about the job.
   e) Ensure that the employee is aware of the required improvements in relation to each element of the duties about which there is a concern.
   f) Set a reasonable timeframe for the achievement of the improvements.
   g) Detail when the employee’s performance will next be reviewed.
   h) Outline the steps to be taken to assist and encourage improved performance. This will include any training, guidance and/or support which is to be given.

2.1.5 The meeting should normally be conducted on a one to one basis.

2.1.6 The content and outcome of the meeting will be confirmed in writing by the manager to the employee.

2.1.7 A copy of this letter, together with any performance and development review documentation will be placed on the employee’s personnel file.

3. Formal process

3.1 First review

3.1.1 If, after the stated timeframes, the desired improvements in the employee’s performance have not been met or where a first instance of reduced performance is sufficiently serious to warrant formal action (e.g. where there are health and safety issues and/or significant costs or liabilities are involved) the employee should be invited in writing to a formal meeting under the Capability Procedure.

3.1.2 The letter of notification must indicate:

   a) The specific areas where the employee's performance is below expectations.
   b) That the purpose of the meeting is to further discuss and review performance standards and to determine an appropriate course of action.
c) That the meeting is being held formally under the MRC’s Capability Procedure.

d) The date, time and location of the meeting.

e) At all stages of the formal procedure, the employee has the right to be accompanied by an MRC colleague or represented by a recognised Trade Union representative. (See Section 5 & 6)

3.1.3 At the meeting, the manager will:

a) Remind the employee of the earlier informal discussions (where these have happened) and the steps taken to support an improvement in his/her performance.

b) Explain as precisely as possible, the reasons for their continued concerns about the employee’s performance.

c) Give the employee the opportunity to explain his/her reduced performance.

3.1.4 If after taking into consideration any explanations offered by the employee, the manager remains concerned, the manager will issue the employee with a formal letter of concern which should cover:

a) the exact details of the underperformance

b) any previous discussions and or support given

c) the specific improvements required in performance

d) further consideration given to additional training and / or support

e) any agreed actions and / or monitoring arrangements

f) details of when the next review of the employee’s performance will take place

g) what further action(s) might take place should the required improvements not be achieved, i.e. moving to the next stage of the formal procedure.

h) the employee’s right to appeal and details of the appeal process

i) a reasonable timeframe for the next review

3.1.5 A copy of this letter will be placed on the employee’s personnel file.

3.1.6 If the employee’s performance improves to the required standard(s) within the timescale laid down, the manager should confirm both verbally and in writing to the employee that the formal Capability procedure has been closed. The employee’s performance should continue to be reviewed within the PDR process to ensure that the enhanced performance is sustained.
3.2 Second Review

3.2.1 If the required levels of performance have not been achieved, following discussion and consultation the employee should be invited to a further formal meeting. An HR representative must be involved and present at this meeting.

3.2.2 The letter of notification must indicate that the purpose of the meeting, referring to the previous meeting, is to review performance standards. The letter of notification must indicate:

a) The specific areas where the employee’s performance is below expectations.

b) That the purpose of the meeting is to further discuss and review performance standards and to determine an appropriate course of action.

c) That the meeting is being held formally under the MRC’s Capability Procedure.

d) The date, time and location of the meeting.

e) At all stages of the formal procedure, the employee has the right to be accompanied by an MRC colleague or represented by a recognised Trade Union representative.

3.2.3 At the meeting, the manager will:

a) Review the history of the case.

b) Remind the employee of the steps which have been taken to assist and support the employee to achieve the required level of performance.

c) Listen to any explanations, mitigating circumstances and concerns which the employee chooses to put forward as reasons for his/her under-performance.

d) Give further consideration to any additional training and support which might reasonably be provided to enable him/her to achieve the required level of performance.

e) Inform the employee that his/her job will be at risk if satisfactory performance levels cannot be achieved and subsequently maintained.

f) Set a reasonable timeframe for the next review.

3.2.4 The outcome of the meeting will be communicated in writing to the employee, or in the absence of a satisfactory explanation resulting from this second review meeting, the MRC may issue a second formal letter of concern. This letter should include:

a) the details of the underperformance (including reference to previous discussions and actions taken).

b) the specific improvements required in performance.

c) details of when the next review will take place.

d) the employee’s right to appeal and details of the appeal process.
e) any further action should the required improvements not be achieved, i.e. moving to the next stage of the formal procedure.

3.2.5 A copy of this letter will be placed on the employee’s personnel file.

3.2.6 If the employee’s performance improves to the required standard(s) within the timescale laid down, the manager should confirm both verbally and in writing to the employee that the formal Capability procedure has been closed. The employee's performance should continue to be reviewed within the PDR process to ensure that the enhanced performance is sustained.

3.3 Final Review

3.3.1 If the required levels of performance have not been achieved, following discussion and consultation the employee should be invited to a further formal meeting.

3.3.2 The employee will be advised in writing of the purpose of the meeting and that it could result in the termination of his/her employment on the grounds of capability.

3.3.3 At this stage the manager will review all the evidence jointly with a representative from the regional/Unit HR team and the appropriate senior manager (Band 3 or above).

3.3.4 At the meeting, they will:

   a) review the history of the case, including the steps taken to assist and support the employee in his/her achievement of the requisite standards of performance.

   b) hear and consider the employee’s account of their current performance levels and progress made against agreed objectives.

3.3.5 Managers will consider carefully and sympathetically requests for Approved Early Retirement for eligible employees where an employee has made all reasonable steps, working with their manager, to improve performance levels. Alternative work options will also be considered (as detailed in 3.3.6 c).

3.3.6 The Unit Director (or nominee) and regional/Unit HR will consider the possible outcomes. These may include:

   a) Further time to allow for improvement. This should only be considered where it is considered that the extension of time is likely to lead to the required improvement in performance; or

   b) a decision to dismiss on the grounds of capability (with notice or with pay in lieu of notice) because the employee’s performance warrants it, or because there is no improvement or sufficient improvement, or the improvement in performance has not been maintained in the review period of the second formal letter of concern.

   c) redeployment to other duties (including retraining as appropriate) or to a more suitable post with the employee’s consent (including one of a lower band or reduced hours).
3.3.7 The outcome of the meeting will be communicated in writing to the employee, within five working days of the meeting.

3.3.8 For outcomes short of dismissal the letter must include:
   a) details of the outcome, with timeframes and reasons for the action; and
   b) the likely consequences within a specified period of further failure to improve or deterioration in performance (which may be more severe action or a recommendation to dismiss).

3.3.9 Where the outcome is dismissal, the letter must include:
   a) the reason for the dismissal;
   b) whether the dismissal is with notice or with payment in lieu of notice;
   c) the date on which the employment will terminate; and
   d) details of the employee’s right of appeal.

3.3.10 A copy of the letter must be placed on the employee’s personnel file.

4. **Ill Health**

4.1 It is the manager’s responsibility to ensure that questions are asked at initial meeting stages to try and identify any ill health issues as early as possible.

4.2 Should an employee **at any stage**, put forward ill health as a contributory factor for under-performance, he/she should give written consent to a medical examination by an MRC approved Occupational Health Adviser and/or for the Occupational Health Adviser to obtain access to his/her medical records from his/her G.P.

4.3 Any resulting report will be taken into account by management.

4.4 Failure to provide such consent may result in the alleged contributory factor being discounted in respect of any decision.

5. **Right of accompaniment**

5.1 At all stages of the formal procedure, the employee has the right to be accompanied by an MRC colleague or represented by a recognised Trade Union representative.

5.2 In exceptional circumstances a family member may accompany the employee for moral support but is not permitted to act as a representative

5.3 Employees are not permitted to be accompanied by a solicitor.

5.4 Chosen representatives can:
   a) address the meeting
   b) put forward the employee’s case
5.5 They cannot answer questions on the employee’s behalf.

6. Timescales

6.1 An employee should normally be given 10 working days written notice to attend a formal meeting to discuss his/her performance in order for him/her to prepare and to organise representation if he/she so wishes.

6.2 Should his/her companion not be able to attend on the date proposed by the MRC, the employee can offer an alternative time and date as long as it is reasonable and falls within 5 working days after the date first proposed by the MRC.

6.3 Letters confirming the outcome of discussions should normally be sent within five working days of the meetings.

7. Appeals

7.1 Principles

7.1.1 All employees have the right to appeal against formal action taken against them at any stage of the formal process.

7.1.2 Details of the person to whom the employee should appeal will be included in the letter detailing the outcome of the Review.

7.1.3 Appeals should be lodged in writing within seven working days of the receipt of the decision letter, clearly stating the ground(s) for appeal.

7.1.4 An employee can submit additional evidence or information that he/she considers relevant to the appeal.

7.1.5 At all stages of the formal procedure, the employee has the right to be accompanied by an MRC colleague or represented by a recognised Trade Union representative.

7.2 Purpose of the Appeal

7.2.1 The purpose of the appeal is to:

a) Determine whether the sanction applied was fair and reasonable in all the circumstances.

b) Determine whether the Capability Procedure was followed correctly.

7.2.2 The aim is to review the basis upon which the original decision was made and to allow:

a) The employee to submit any new evidence.
b) The employee or an accompanying MRC colleague or recognised Trade Union Representative of his/her choice to comment on any new evidence or,

c) The employee to raise any procedural issues, or comment on those matters he/she believes have been ignored and/or received insufficient consideration.

7.3 Authority Levels

7.3.1 Managers who have the authority to hear appeals within the MRC’s Capability procedure are:

• At least one Band above the employee

• Up to and including a written warning (first and/or final) a Band 4 or above manager

• Up to and including dismissal – See Delegated Authority policy

7.4 Appeal Hearing Process

7.4.1 Final appeals will be heard by a Director or Senior Manager from within the MRC unconnected with the case and by a Senior HR professional.

7.4.2 In cases on appeal against a decision to dismiss, those hearing the appeal will be joined by a National recognised Trade Union Official.

7.4.3 The Senior HR professional may be external to the MRC.

7.4.4 The Director or Senior Manager should act as Chairperson.

7.4.5 Upon receipt of an appeal, the responsible manager should:

a) Send the employee details of the arrangements relating to the appeal hearing.

b) Advise them of their right to be accompanied by an MRC colleague or recognised Trade Union representative of their choice. The employee should where possible confirm that person’s attendance and identity before the hearing commences.

c) Hold the appeal hearing where possible within 10 working days of receipt of the letter containing the grounds of appeal. This is subject to the employee’s right to request a postponement of up to five working days where his/her chosen representative is not available to attend on the original day or time.

7.5 The Appeal Hearing

7.5.1 At the Appeal Hearing, the Chair should:

a) introduce those present and explain their respective roles

b) explain the purpose and format of the Appeal Hearing, including the possible outcomes
c) invite the employee to explain the basis on which he/she is appealing, referring to documents or evidence previously submitted or any new evidence which has come to light where he/she believes this may support his/her grounds for appeal.

d) if an employee is accompanied by an MRC colleague or recognised Trade Union representative, they may outline the employee’s grounds for appeal or make statements on an employee’s behalf. They may not, however, answer any questions on an employee’s behalf.

e) ask all necessary questions and summarise the facts.

f) decide on whether any further investigation/action is required. This may require an adjournment.

g) The Chair should, whenever possible, verbally inform the employee of the decision reached and the reasons for it.

7.5.2 The decision should then be confirmed in writing with reasons. This will normally be confirmed within five working days of the Appeal Hearing concluding, although this will be extended should further time be required. In such an instance, the employee will be notified of the proposed date upon which the decision is expected to be made.

7.6 Appeal Outcomes

7.6.1 Possible outcomes are as follows. The Appeal Panel may:

a) **Uphold the current decision** — i.e. confirm the outcome of the review meeting, thereby rejecting the employee’s appeal

b) **Overturn the current decision** i.e. set aside the original review decision, thereby upholding the employee’s appeal

c) **Amend the current decision** i.e. substitute an alternative form of action. The decision could be changed in some way, for example, the improvements required might be redefined in some way or the timeframe(s) amended within which the improvements should be achieved.

7.6.2 The decision made at appeal hearing is final, with no further right of appeal.

8. Grievances

8.1 An employee may choose to raise a formal grievance during the formal stages of the Capability Procedure. In these circumstances, actions under the procedure may (if appropriate) be put on hold and a grievance hearing convened under the MRC Grievance Procedure. Refer to the MRC’s Grievance policy for further guidance, in particular sections 2.3 (Grievance Procedure) and section 2.4 (Raising a formal guidance).

8.2 As a general rule:

a) Where the employee’s grievance relates to contemplated dismissal or action under the Capability Procedure, the appropriate forum for addressing concerns is the Appeal Hearing.
b) Where an employee claims that action under the Capability Procedure is in itself an act of discrimination, it should be pursued under the Grievance Procedure as a separate course of action.

8.3 Any such grievance needs to set out in writing with the precise grounds of the grievance outlined.

9. Effective date

9.1 This policy is effective from 1st March 2011.

10. Review date

10.1 This policy will be regularly reviewed to incorporate any legislation changes and will be formally reviewed March 2014.

11. Amendment history

<table>
<thead>
<tr>
<th>Version</th>
<th>Date</th>
<th>Comments/Changes</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.1</td>
<td>12/12/2006</td>
<td>Published by Toni Allen on HR Portal to reflect changes to staff code.</td>
</tr>
<tr>
<td>1.0</td>
<td>July 2009</td>
<td>Amended by Corporate HR as part of project review of HR policies.</td>
</tr>
<tr>
<td>2.0</td>
<td>September 2010</td>
<td>Removal of the reference to severance/early retirement being an option for discussion as part of the formal procedure.</td>
</tr>
<tr>
<td>2.1</td>
<td>March 2011</td>
<td>Updated to clarify specific rights to appeal, authority levels and managers’ responsibilities to identify ill health issues</td>
</tr>
</tbody>
</table>
Performance
Skills, ability, aptitude, knowledge.

Meetings under Competence Issue
- Deliberate Carelessness Negligence
- Conduct
- Disciplinary Procedure

Ill Health
Sickness absence

If not met
Dismissal
If met continue with

Overview of Capability