

Capability Policy

Version number	Date approved (including committee)	Reason for production/revision	Author	Proposed next review date
V1.1	April 2023	Review	Head of HR	April 2026 and as required
V1.0	Dec 2020 ExCo	New Policy For Annual review	Head of HR	December 2021 and as required
Related policies				
• Grievance • Disciplinary				
External Reference				
N/A				

1. Purpose

- 1.1 The purpose of this procedure is to manage underperformance arising from a lack of skill, aptitude or ability. It aims to encourage employees to achieve and maintain acceptable standards of performance and is designed to ensure fairness and consistency in the management of employee performance.

“Capability” is the ability of the employee to perform the job they are employed to do in an effective manner.

2. Application of the policy

- 2.1 This procedure applies to all employees of ICMP.

- 2.2 It does not apply to:

- Staff who are still in their probationary period (concerns should be dealt with under the Probationary Procedure).
- Employees of external contractors and providers of services (e.g. contract cleaners, agency workers).

This Procedure should be used where performance falls below the required standards for the job and the underperformance is deemed to be due to lack of skill, aptitude or ability.

- 2.3 It should not be used where the Sickness Absence Procedure or the Disciplinary Procedure is appropriate.

3. Key principles

- 3.1 All efforts should be made to ensure that there are no unreasonable delays in arranging meetings under this policy. The employee should be advised that they may be accompanied by a work based colleague at formal meetings.
- 3.2 Information relating to formal proceedings will be kept confidential as appropriate.

4. Support under the performance review process

- 4.1 All employees should have their performance managed routinely under the performance review policies and procedures. Where the line manager has concerns about the performance of an employee they should initially manage these informally within the performance review process and/or normal day-to-day management processes.
- 4.2 If informal support within the performance process does not produce the required improvements to performance within a reasonable timescale, the line manager will decide whether to recommend that the matter should be dealt with under the capability procedure.
- 4.3 This Procedure can be initiated at any time during any performance review cycle. It is recommended that concerns are raised with the employee as soon as possible.

4.4 Before embarking on the Capability Procedure, management should ensure that through normal performance management and supervision:

- The employee has been alerted to concerns;
- A programme of support has been arranged for the employee in line with the ICMP's procedures (e.g. regular meetings, monitoring, objectives set, training and mentoring), and has been well documented and can be provided in written form; and
- A reasonable timescale for improvement has been set and the employee has been informed of the programme of support in writing.

Notification about moving to the Capability Procedure

4.5 A meeting will be held by the line manager with the employee, who is able to be accompanied by a work-based colleague at this meeting. Following this meeting, if it is evidenced that there is insufficient progress the employee will be notified in writing that the performance review process will no longer apply and that their performance will be managed under ICMP's capability procedure.

4.6 This notification will trigger the commencement of the formal capability procedure. The notification will come from the line manager:

- Include an invitation to attend a formal capability meeting. **At least 5 working days'** notice will be given of the date of the meeting.
- Contain sufficient information about the concerns about performance and their possible consequences.
- Contain any copies of relevant written evidence.
- Confirm that the employee is entitled to be accompanied by a work-based colleague provided they abide by the rules of ICMP.

5. The Capability Procedure

5.1 Stage 1: Formal Meeting

5.1.1 The senior manager will chair the meeting. The meeting is intended to establish the facts.

5.1.2 The line manager will identify the nature of the performance concerns and the steps and the support already given during appraisal management, the standards required and where the shortfall in their performance has occurred. Where appropriate, this should include written evidence of the concerns identified.

5.1.3 The employee (or their representative) will be allowed to respond to concerns about their performance and make any relevant representations.

5.1.4 The senior manager will consider the evidence presented and, after an adjournment to consider their decision, will decide either:

- That the matter should not be taken forward formally or should be

dealt with informally. In this case the Capability Procedure will cease and the performance process will re-start; **or**

- To issue a first written warning; **or**
- In exceptional circumstances the decision may be to issue a final written warning or to invite the employee to a Formal Hearing where termination of employment may be considered (see section 5.3 below).

5.1.5 Where a written warning is to be issued, the meeting will continue and the senior manager will:

- Give clear guidance on the improved standard of performance required (this may include the setting of new objectives).
- Explain the support that will be available to help the employee improve their performance.
- Set out the timetable for improvement and explain how performance will be monitored and reviewed.
- Warn the employee formally that failure to improve within the monitoring and review period could lead to dismissal.

5.1.6 The decision will be confirmed to the employee in writing **within five working days**.

5.2 Stage 2: Formal Review Meeting

5.2.1 A Formal Review Meeting will be convened at the end of the period of support to consider the outcome. The employee will be notified in writing **at least 5 working days** before of the date and time of the meeting together with any relevant documents, in line with paragraph 4.6 above.

5.2.2 The Stage 2: Formal Review Meeting should follow a similar format to the Stage 1: Formal Capability Meeting (section 5.1 above). Its purpose is to consider the progress that has been made by the employee during the monitoring and review period.

5.2.3 The senior manager will chair the meeting.

5.2.4 The senior manager will consider the evidence gathered during the monitoring and review period, and any evidence presented and other representations from the employee, before reaching a decision.

5.2.5 The senior manager may decide whether:

- The employee has made sufficient improvement. In this case the Capability Procedure will cease and the performance process will re-start; **or**
- Some progress has been made. In this case a further monitoring and review period will be set out; **or**

- No, or insufficient improvement, has been made during the monitoring and review period. In this case the employee will be issued with a final written warning or the employee will be invited to a Stage 3 - Formal Hearing.

5.3 Stage 3: Formal Hearing

- 5.3.1 The employee will be notified in writing **at least 10 working days** before of the date and time of the meeting together with any relevant documents.
- 5.3.2 Employees are entitled to be accompanied to formal meetings held under this procedure by an appropriate work colleague. If the employee's chosen companion is unavailable at the time of the hearing the employee can propose an alternative time within five working days of the originally scheduled date. If the companion is not available within five working days ICMP may require the employee to choose an alternative companion.
- 5.3.3 A member of ExCo will chair the meeting. A member of the Human Resources team will be present and the employee can be accompanied by a work-based colleague.
- 5.3.4 The management case will be presented by the senior manager who conducted the Stage 1 and/or stage 2 of the process. They should:
 - Identify the performance concerns, the support already given during performance management, monitoring and review period. The standards required and where the shortfall in their performance has occurred;
 - Provide written evidence of the concerns identified;
 - Consider and discuss any reasons or causes for shortfall. The employee should be given the opportunity to discuss any contributory factors they feel may have affected their performance.
- 5.3.5 The Chair will consider the evidence gathered during the monitoring and review period, and any evidence and advice presented and other representations from the employee, before reaching a decision. They may decide that:
 - An acceptable standard of performance has been achieved. In this case, the Capability Procedure will end and the performance process will re-start; **or**
 - Some progress has been made. In this case a further monitoring and review period will be set out; **or**
 - That performance remains unsatisfactory. In this case, a decision, will be made that may include the employee being re-deployed or dismissed on grounds of capability.
- 5.3.6 In the case of recommendation that the employee should be dismissed , the employee will be informed **within 5 working days** of the reasons for the decision to dismiss, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
- 5.3.7 Once the decision to dismiss has been taken, ICMP will issue notice of dismissal

within 5 working days of the decision.

- 5.3.8 The period of notice will be the statutory minimum or contractual notice whichever is the longer.

5.4 Stage 4: Appeals

- 5.4.1 An employee may appeal against a decision to dismiss on capability grounds. Appeals should be made **within 5 working days** of the receipt of the dismissal letter. The letter must set out the grounds for the appeal. Appeals must be made in writing to the Chief Executive.
- 5.4.2 An appeal hearing will be arranged as soon as possible. Notice of the time and venue of the appeal hearing will be **at least 5 working days**. The Chief Executive will be the Chair and a representative of Human Resources will be in attendance. The employee can be accompanied by a work-based colleague.
- 5.4.3 The employee will provide, **at least 3 working days** before the hearing, all documents that they intend to present at the hearing. Copies of all the papers to be presented will be sent to Chair **2 working days** before the hearing.
- 5.4.4 The decision of the Chair will be final.
- 5.4.5 The following general points should be noted:
- An appeal at the formal meeting and review stages will not interrupt the procedure (unless the appeal decision leads to reconsideration);
 - An appeal will not involve a re-hearing of earlier evidence
 - If either side intends to produce new evidence (or invite new witnesses), all relevant documentation should be circulated in advance within the agreed timescales.
- 5.4.6 An appeal can only be made on the following grounds:
- The capability procedure has not been followed;
 - To contest the level of capability action;
 - New information has become available that is relevant.

Other points to note

6. Overlapping Capability and Grievances Procedures

- 6.1 An employee may raise a grievance after capability proceedings have started against them.
- 6.2 The senior manager or person managing the Procedure should consider the implications of the grievance on the capability. If the grievance has been raised before the appeal stage of the procedure and the matters of grievance are linked to those of the capability, then the grievance should be considered within the capability

appeals procedure. If the grievance concerns matters that are unrelated to the capability, then a separate process under the Grievance Procedure will need to start but this does not prevent the two processes running concurrently.

7. Sickness absence

- 7.1 Short term sickness absences will not normally interfere with monitoring or other formal procedures.
- 7.2 If long term sickness absence appears to be triggered by the start of monitoring or the Capability Procedure, this will be dealt with in accordance with the Sickness Absence Procedure. The employee will be referred to Occupational Health for an assessment of their fitness for work and to attend any meetings called by management. If an employee is certified by Occupational Health as fit to attend management meetings, and they subsequently do not attend them would be dealt with under the disciplinary procedure.
- 7.3 If an employee is unable to attend a meeting they may choose to provide written permission to the effect that their representative may act on full authority and they will accept any decision that their representative has been party to. They may also choose to provide a written response.
- 7.4 Alternatively, if they cannot attend for a genuine reason, and is not willing for their representative to act on their behalf, it may be reasonable to arrange another meeting.

8. Expiry of warnings and references

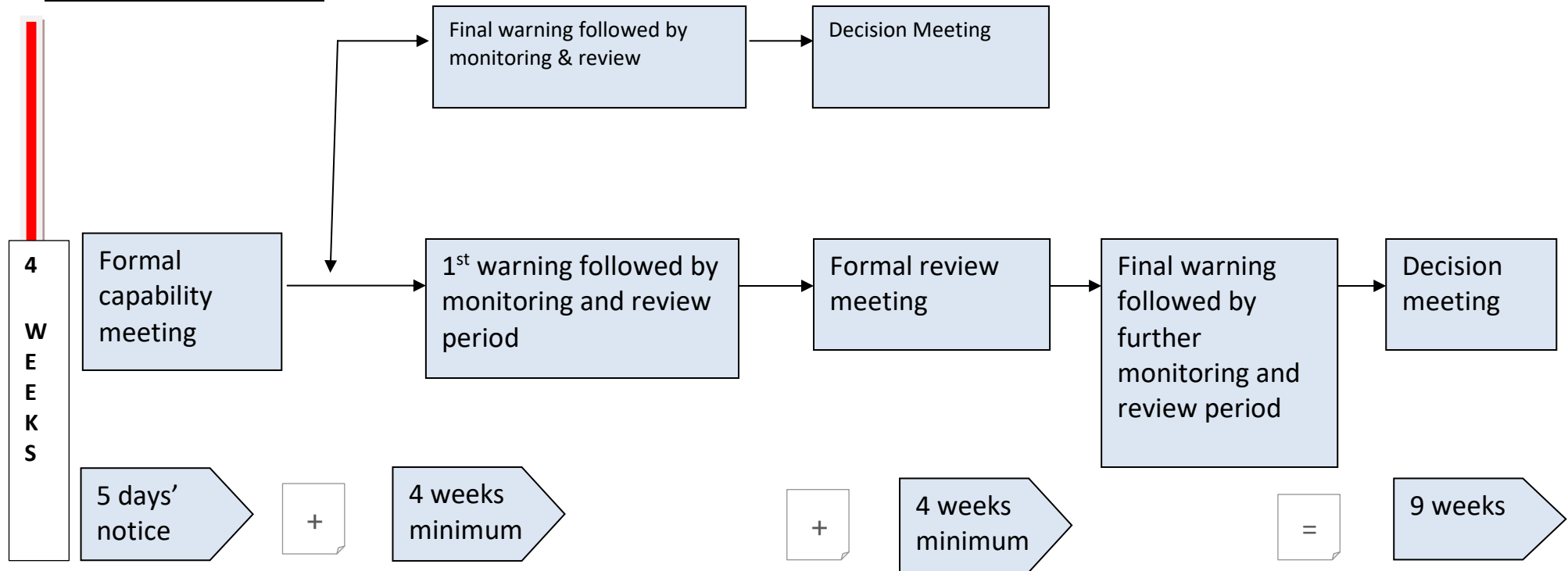
- 8.1 Any warnings in relation to capability given will remain on file for 12 months. If an employee is subject to the Capability Procedure, or has a warning in place at the time of the reference request, this must be referred to in any employment reference.

9. Inability of employee to attend meetings or hearings

- 9.1 If an employee is unable to attend a meeting they may choose to provide written permission to the effect that their representative may act on full authority and they will accept any decision that their representative has been party to. They may also choose to provide a written response.
- 9.2 Alternatively, if they cannot attend for a genuine reason, and is not willing for their representative to act on their behalf, it may be reasonable to arrange another meeting. If the employee fails to attend for a second time, management can make a decision based on the facts and evidence gathered during the review period in the employee's absence.

CAPABILITY PROCEDURES

INFORMAL STAGE



Note: The timings given above are illustrative only and are offered as minimum periods, which will be appropriate only in straightforward cases. ICMP will need to tailor the length of its monitoring and review periods to suit individual circumstances.