

**JOINT AGREEMENT ON GUIDELINES FOR
HANDLING CAPABILITY IN
FURTHER EDUCATION COLLEGES**

BETWEEN

THE ASSOCIATION OF COLLEGES (AoC)

AND

**ASSOCIATION FOR COLLEGE MANAGEMENT
(ACM)**

**ASSOCIATION OF TEACHERS & LECTURERS
(ATL)**

GMB

**NATIONAL ASSOCIATION OF TEACHERS IN
FURTHER AND HIGHER EDUCATION (NATFHE)**

**TRANSPORT & GENERAL WORKERS' UNION
(TGWU)**

UNISON

April 2000

JOINT AGREEMENT ON GUIDELINES FOR HANDLING CAPABILITY

1 INTRODUCTION

- 1.1 This procedure is designed to assist and encourage all employees to achieve and maintain standards of job performance. The aim is to ensure consistent and fair treatment for all and to assist any employee who is considered to be experiencing difficulties in performing satisfactorily the duties required of the post to which s/he was appointed. It is designed to provide managers and employees with an opportunity to improve their performance in the workplace.
- 1.2 Concerns about capability may arise from a number of factors, including:
 - * absence of facilities crucial to the employee's performance;
 - * lack of proficiency and poor overall organisation;
 - * changes in the nature and allocation of work, including heavy workload;
 - * lack of aptitude, skill or experience;
 - * personal/family difficulties;
 - * short-term health problems;
 - * reorganisation or redefinition of role;
 - * poor attendance at work, related to genuine ill health.
- 1.3 Concerns about capability should not be confused with disability. Where employees become disabled during their employment it is important to ensure that every effort should be made to retain them in their original job, or redeploy them to a suitable alternative post, in line with the requirements of the Disability Discrimination Act 1995. Recourse to the capability guidelines should only take place when schemes to deal with disability have been exhausted.
- 1.4 In exceptional circumstances, it may be necessary to temporarily redeploy an employee immediately from their normal job, e.g. employees against whom serious complaints of lack of capability and/or lack of competence have been made by students or workplace colleagues.
- 1.5 Throughout this procedure, the term 'line manager' is a generic term. This procedure applies to all employees other than probationers and senior post holders.
- 1.6 An employee has the right to be represented and accompanied by a representative of a trade union or workplace colleague at any stage of the formal capability procedure.

2 INFORMAL PROCEDURE

- 2.1 It is important to recognise that many issues of capability can be, and should be, resolved without recourse to the formal capability procedure. The following is intended as a framework and may need to be adapted to suit the needs of each situation.
- 2.2 As soon as a concern is identified by either the line manager or the employee, the issue should be discussed between the employee and his/her line manager. In these circumstances, both parties will have every opportunity to discuss the concern, to make any comments and to record them if desired. Most areas for concern can generally be dealt with through informal discussions and counselling.
- 2.3 If the concerns still exist, the line manager should bring the matter to the employee's attention and a proper review should be conducted with structured information gathering, which should be systematically recorded. This should include difficulties of identified differences, agreed objectives to address difficulties and planned support.
- 2.4 Once the review has been undertaken a meeting should take place to discuss the outcome with a view to securing the improvement to the standards required. The meeting should be informal and constructive to allow the employee an opportunity to express their opinion and for the line manager to determine whether there are any external factors which may be contributing to the poor performance. If the concern is one of poor health, then the matter needs to be dealt with under the procedure for sickness absence.
- 2.5 After the meeting an agreed action plan should be set up to include:
 - * further training specifically directed to training needs which is identified to facilitate to improvement;
 - * monitoring review and variance of workload as required;
 - * setting realistic review and monitoring of standards of performance in respect of agreed objectives and the requirements of the job;
 - * review and monitoring of the amount of supervision.
- 2.6 The action plan should be given in writing to the employee and should contain a summary of the improvement(s) required, the target(s) and the timescale(s) over which these are expected.
- 2.7 Continued monitoring and assessment should take place for a period of time, ranging from one to three months depending on the requirements to improve performance. It is anticipated that in the vast majority of cases, no further action, other than normal follow-up, will be necessary.

3 FIRST FORMAL INTERVIEW

- 3.1 Where the levels of improvement agreed in 2.4 above are not met, then a formal meeting should take place to discuss performance. This meeting constitutes the date of entry into the formal procedure. The employee has the right to be accompanied at the meeting by a trade union representative or workplace colleague.
- 3.2 At this meeting, the employee should be reminded of the previous discussion and told of the continuing shortcomings. The employee should be given an opportunity to give their interpretation before deciding what action should be taken. This needs to be confirmed in writing with any objectives specified. It is possible that circumstances outside the individual's control have caused, or at least contributed to, the reduced effectiveness of their performance over the period monitored.
- 3.3 After the formal interview, a written warning should be issued that makes it clear that the job is at risk if improvement is not achieved. Monitoring and assessment needs to continue for a further period of [between one and three months], depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.

4 SECOND FORMAL INTERVIEW

- 4.1 Failure to improve after the review period should be followed by a repeat of section 3 for a second time. This constitutes a final written warning and should be given in accordance with the capability procedure. The caution should include the possibility of voluntary redeployment or termination of employment.
- 4.2 If improvement is still insufficient, the manager should consider whether voluntary redeployment could be considered within the corporation. The post does not have to be on the same scale; if so, then the offer should be made in writing, explaining why it is being made and the consequences of refusing it. The employee should be given time to consider the offer and be advised to discuss it with his/her representative.

5 DISMISSAL INTERVIEW

- 5.1 If no offer of voluntary redeployment is made, or one is not accepted, a final investigatory formal interview should be arranged with the employee and his/her representative, in accordance with the disciplinary procedure.

- 5.2 The interview should be conducted by the manager and a representative from the Personnel/Human Resources Department. Notification should be given in writing, allowing the employee to bring a representative. On hearing the evidence and any explanations, a decision needs to be considered as to whether to dismiss.
- 5.3 If this is to be the outcome, the employee should be dismissed in accordance with the capability procedure, with appropriate notice, and should be informed of the right to appeal in accordance with the capability procedure.
- 5.4 However, if the chosen representative of the employee is unavailable on the date of the initial dismissal hearing, the employee may delay the date of that hearing once up to [10] days to enable the chosen representative to attend.
- 5.5 A similar format for appeals to that contained in Appendix B of the Disciplinary Procedure should be used.

Note

Definition of Joint Agreement

The Agreement on these guidelines is intended to be a recommendation to colleges as to how to deal with issues relating to capability of employees.

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HANDLING CAPABILITY**

SIGNATURES OF THE PARTIES TO THIS AGREEMENT

AoC

ACM

ATL

GMB

NATFHE

TGWU

UNISON

Date of Commencement of this Agreement

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