



## CAPABILITY PROCEDURE

### DOCUMENT VERSION CONTROL

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## **INTRODUCTION**

SESTRAN recognises the need to ensure that at all times the company has a full complement of employees who are highly competent and capable of providing an efficient and effective service to our customers.

It is recognised, however that situations may occur where an employee fails to perform to the duties of his/her post to the minimum requirements and standards. This may be due to:

- Health related capability
- Performance related capability/ Lack of necessary qualification

## **REPRESENTATION**

SESTRAN allows employees to be accompanied at any formal capability meeting or hearing by a fellow worker or trade union official of their choice.

## **HEALTH RELATED CAPABILITY**

SESTRAN will not consider terminating the employment of an employee who is absent from work due to genuine sickness or injury unless proper process has been followed. In all cases advice must be sought from SESTRAN's Human Resources Adviser before proceeding.

### **1. Long Term Sickness Absence – Medical Retirement Recommended by Occupational Health**

In these circumstances employees who are members of the Local Government Pension Scheme and meet the relevant qualifying criteria will be retired on the grounds of ill health and can therefore access the appropriate pension benefits. It should be noted that the Scheme provides for two levels of retirement. SESTRAN's Human Resources Adviser will advise on the specific process to follow depending on the level considered appropriate in a particular case but in general the following actions should be taken:

- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- take account of the requirements of the Equality Act 2010 if applicable to the employee's case.
- meet with the employee as soon as possible to discuss the occupational health advice;
- at the meeting the employee will be made aware that even though occupational health advice is that they be retired on the grounds of ill health, they still have the right for consideration to be given as to whether there are any other jobs they can do with SESTRAN and obtain their views on this;

- proceed with retirement if the employee agrees that no reasonable adjustments can be made/redeployment is not appropriate;
- confirm a decision to dismiss on the grounds of capability due to long-term ill health in writing to the employee and advise of their right to appeal against this decision;
- act reasonably towards the employee at all times.

## **2. Long Term Sickness Absence – Medical Retirement not Recommended**

In these circumstances the following actions should be taken:

- review the employee's absence record to assess whether it is sufficient to justify dismissal;
- consult the employee;
- obtain up-to-date advice from the occupational health service;
- take account of the requirements of the Equality Act if applicable to the employee's case.
- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- consider whether adaptations can be made to the employee's post which will enable them to return to work;
- review whether there are any other jobs that the employee could do prior to taking any decision on whether to dismiss;
- confirm a decision to dismiss on the grounds of capability due to long-term ill health in writing to the employee;
- allow a right of appeal against any decision to dismiss the employee on grounds of capability due to long-term ill health and advise of their right to appeal against this decision ;
- arrange a further meeting with the employee to determine any appeal – See Appeals Section for guidance;
- following this meeting, inform the employee of the final decision;
- act reasonably towards the employee at all times.

## **1. Frequent Short Term Sickness Absence**

In these circumstances the following actions should be taken:

- review the employee's absence record to assess whether it is sufficient to justify dismissal;
- consult the employee;
- obtain up-to-date advice from the occupational health service;
- take account of the requirements of the Equality Act if applicable to the employee's case.

- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- consider whether adaptations can be made to the employee's post which will enable them to reduce their absences;
- if appropriate, review whether there are any other jobs that the employee could do prior to taking any decision on whether to dismiss;
- confirm a decision to dismiss on the grounds of capability due to short term persistent absence in writing to the employee and advise of their right to appeal against this decision ;
- allow a right of appeal against any decision to dismiss the employee on grounds of capability due to frequent short term absence. See Appeals Section for guidance;

## **PERFORMANCE RELATED CAPABILITY/LACK OF NECESSARY QUALIFICATIONS**

SESTRAN recognises the difference between:

- a deliberate failure on the part of the employee to perform to the standards of which he/she is capable, in which case the Disciplinary Procedure will be implemented; and
- a case of incapability, where an employee is lacking in knowledge, skill or ability and so cannot carry out his/her duties to the standard required, in which case the Capability Procedure in relation to Performance Related Capability will be implemented in an attempt to improve performance.

### **1. Performance Related Capability**

If it becomes clear that an employee is not performing his/her duties to the required standard due to a lack of knowledge, skill or ability, the following actions should be taken:

- make the employee aware that he/she is not performing to the required standard;
- explore the reasons why this standard is not being met and discuss with employee ways of addressing these, eg, consider if there are any personal or health issues which may be impacting on performance;
- explore ways in which the employee can be assisted in attaining the required standard;
- give the employee a reasonable period to improve and undertake any training that is deemed necessary; and

- offer the employee additional supervision/support as considered necessary
- produce a note of the meeting to be agreed and signed by the employee and manager.

At the end of this period, another meeting will be arranged to review the employee's progress and decide whether any further action is required.

If the employee's performance has still not improved to an acceptable standard, a more formal meeting will be held. The employee will be given a warning about his/her performance, given a further chance to improve, and offered closer supervision.

If the employee is unable to improve to the required standard, the manager will consider whether he/she can be moved to alternative work more suited to his/her abilities.

Once all attempts to improve the employee's performance have been exhausted, and if alternative duties within the organisation cannot be found, it may as a last resort become necessary to dismiss. Advice must be sought from SESTRAN's Human Resources Adviser before proceeding.

In these circumstances, the following actions should be taken:

- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- confirm a decision to dismiss on the grounds of performance related capability in writing
- allow a right of appeal against any decision to dismiss the employee on the grounds of performance related capability;

## **2. Lack of Necessary Qualifications**

Where an employee no longer holds the correct qualifications to continue to perform his/her duties, the manager will consider whether adjustments can be made to existing duties so that employment can continue. Where the qualification in question is fundamental to the employee's duties and he/she can not continue without them, consideration will be given as to whether the employee can be moved to another position. Consideration will also give to whether the employee can be returned to his/her original duties, once the qualifications have been regained.

Once all attempts to amend the employee's existing duties or to find alternative duties within the organisation have been exhausted, it may as a last resort become necessary to dismiss. Advice must be sought

from SESTRAN's Human Resources Adviser before proceeding. In the following circumstances the following actions should be taken:

- advise the employee in writing as soon as it is established that termination of employment has become a possibility;
- meet with the employee to discuss the options and consider the employee's views on continuing employment;
- confirm any decision to dismiss on the grounds of capability due to lack of necessary qualification in writing;
- allow a right of appeal against any decision to dismiss the employee;

## **APPEAL**

### **1. Notification of Appeal**

An employee may appeal against any dismissal for the reason of capability. This appeal must be made within 10 working days of receipt of the letter confirming the decision to dismiss.

### **2. Appeal Arrangements**

All arrangements will be put in place by the Appeal Chairperson.

The appeal should be heard by a manager or Partnership Member not previously involved with the capability procedure.

Appeals hearings will normally be held within 20 working days of receipt of the written appeal. A Human Resources Adviser and/or Legal Adviser may be present at the appeal hearing as required. The employee will be given at least 5 working days' notice of the date of the appeal hearing.

The case for management will be presented by the person who managed the capability procedure.

The chairperson of the appeal will consider cases presented before them by the management representative and the employee and/or their representative.

### **3. Appeal Outcome**

The chairperson must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether to uphold the dismissal.

Upon completion of the appeal, the chairperson will convey his/her decision to the employee and will confirm this in writing within 5 working days of the hearing date. The decision at the appeal is final.

## **REVIEW**

This policy will be reviewed annually, to take account of developments within SESTRAN and legislative requirements.