

<b>CAPABILITY POLICY AND PROCEDURE</b>			
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<b>For use by:</b>	All employees of Burgess Farms and its subsidiary Companies		
<b>Purpose:</b>	To support management and employees by providing guidance on managing poor performance due to personal competence.		
<b>This document supports: <i>Standards and legislation</i></b>	Employment Rights Act 1996 Equality Act 2010		
<b>Key related documents:</b>	Disciplinary Policy and Procedure Absence Management Policy and Procedure Data Protection Policy		
<b>Review date:</b>	Changes to legislation / Change to Company Policy		



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# Definitions

“**Company**” means Burgess Farms

“**Subsidiary Companies**” means all Companies owned by Burgess Farms

## 1. Procedure Statement

The Capability Policy and Procedure runs parallel with, but is not part of, the Disciplinary Policy and Procedure. The Company recognises that poor job incapability should not be treated as "disciplinary offences" where the incapability is not attributable wholly or in part to the employee's conduct, including but not limited to lack of application.

The first stage in dealing with poor job performance is to determine whether the matter is one of capability or misconduct. This can normally be ascertained by investigation.

Incapability is where the employee has received all necessary training but still cannot achieve or maintain a satisfactory level of performance through no fault of their own, for example, due to a lack of understanding or appropriate training, or as a result of poor or deteriorating health whilst at work.

If, in the line manager's opinion, the employee's performance is deemed to be below an acceptable standard then the Capability Procedure will be invoked. The Capability Procedure may begin at any stage of the process the Company considers appropriate to the employee's performance and depending on the circumstances of the case and the seriousness of the employee's underperformance.

## 2. Key Principles

The Company will:

- raise and deal with issues or concerns promptly
- not unreasonably delay meetings, decisions or confirmation of those decisions
- act consistently
- carry out any necessary investigations, to establish the facts of the case
- inform employees of the basis of the problem and give them an opportunity to put their case forward and work with the Company to address the capability issue
- respond before any decisions are made
- allow employees to be accompanied at any formal disciplinary meeting, should it arise and once all avenues have been explored to ensure competence
- allow employees to appeal against any formal disciplinary outcome

### 3. Scope

This procedure applies to all employees employed by Burgess Farms and its subsidiary companies. It is non-contractual and may be varied or revoked by the Company at any time with or without notice. This procedure may be commenced at any stage where the facts of a particular case merit this. It shall be used as a means of obtaining full management consideration of any matter that causes an employee to be genuinely incapable of performing the duties of their role.

The Capability Procedure is intended to address issues of performance which arise in relation to:

- a) An **inability to perform** at the required standard for a post because of a shortfall in competency, skill, knowledge or understanding
- b) An **inability to sustain** the required level of performance in a post because of physical or mental ill-health.

The Capability Procedure is designed to address these issues as relating to the capability of an individual and not as behavioral issues to be addressed by the Disciplinary Policy.

Capability issues arising in relation to **personal competence** may result from shortfalls in skill or knowledge which are correctable by further training and personal development; or may relate to a fundamental inability to perform the scope and range of duties in a post either because the individual was wrongly appointed in the first place or because the complexity and demands of the post have changed over time.

## 4. Managing Competence

### 4.1 Informal

#### 4.1.1 Stage One: Investigation

The employee's manager will investigate with the employee the cause of their poor performance.

Causes could include: -

- lack of skills/knowledge and understanding
- Inadequate training
- lack of support, tools or other resources
- lack of communication
- chronic health problem
- deterioration of mental/physical health
- problematic working relationships

The manager will invite the employee to an informal meeting to discuss concerns regarding their performance. During the meeting the manager will give the employee factual examples of their unsatisfactory performance, whether related to 'performing' the role or 'sustaining' their performance in the role. The employee will be asked for their

explanation. Where appropriate the manager will investigate the cause explained by the employee.

Following the meeting the manager will consider the appropriate course of action, this may include:

- take no further action
- refer the matter for investigation under the disciplinary procedure
- issue guidance to the employee on what they need to do to improve their performance. This could take the form of a Personal Improvement Plan to support the employee. See attached Appendix
- progress the matter to the formal stage (\*) of the Capability Policy

The manager may seek advice from the Site HR Representative before making a decision. In each case, the employee will be advised without reasonable delay.

(\*) Formal Stage Two will only apply where there is clear evidence that:

- support and training have been provided to the employee,
- where no improvement has been recorded, and
- the manager deems that it is unlikely that sufficient improvement could be achieved with further informal support/training.

## **4.2 Formal Review Process**

### **4.2.1 Stage Two: Review meeting**

Where informal stage 4.1 does not lead to a satisfactory improvement in the employee's performance, the employee will be invited to a formal performance review meeting. The manager and HR Site Representative will attend a meeting with the employee to discuss their performance. Employees will be given reasonable advance notice of the meeting which will normally be a minimum of two working days advance notice and in more complex matters four working days. Employees have the right to be accompanied at this meeting by a colleague or a trade union representative.

At the meeting the employee will be informed of the areas of their performance which are failing to meet expectations. The employee will be given the opportunity to state their case and to explain any issues that have affected their performance. The employee and the manager will discuss a Personal Improvement Plan (PIP) which will include any training or support which will be put in place, set measurable and appropriate objectives and standards of performance which must be achieved.

Following the meeting the employee will receive written confirmation of what was discussed and a copy of the PIP. The letter will confirm:

- where the employee failed to meet expectations
- which objectives or performance standards have not been met
- the employee's explanations as to why they have not met the objectives
- whether a written warning for failing to improve or sustain improvement is appropriate; dates of a weekly meeting for monitoring whether the objectives or standards are being met

- a review date for the next meeting which will be at Stage Three of the procedure – normally four to six weeks, but may vary depending on individual circumstances, from the date of this meeting

A copy of the PIP, which will include all notes and agreed timescales for improvement, training, coaching, etc., will be included with the letter. A copy of the letter and the PIP will be placed on the individual's personal file.

#### **4.2.2 Stage Three: Review Meeting**

The manager and Site HR Representative will meet with the employee to review progress at the agreed review date.

If some improvement has been made, the manager may elect to continue regular informal performance reviews and to stop the formal capability procedure. A written record will be kept of any meetings used to review performance (or continued progress will be tracked within the PIP document commenced at Stage Two). If it appears that improvement has not been sustained, the manager may reinstate the Capability Procedure.

If the objectives or performance standards set have not been met, the manager will review the PIP with the employee and confirm in writing: -

- where the individual has failed to meet expectations
- which objectives or performance standards have not been met
- the employee's explanations as to why they have not met the objectives
- whether a final written warning for failing to improve or sustain improvement during the agreed review period at Stage two of this procedure is appropriate
- a review date for the next meeting which will be Stage Four of the procedure – normally four to six weeks, but may vary depending on individual circumstances, from the date of this meeting.

A copy of the PIP which will include all notes and agreed timescales for improvement, training, coaching, etc., will be included with the letter. A copy of the letter and the PIP will be placed on the individual's personal file.

#### **4.2.3 Stage Four: Capability Meeting**

At the end of the third review period, the manager and Site HR Representative will review the individual's performance. If they have failed to meet the objectives or performance standards, a capability meeting will be held.

At this meeting the manager will make it clear to the employee where they have failed to meet the required standards for the role and that one option is to dismiss the employee.

The employee will be given reasonable advance notice of the meeting which will normally be a minimum of two working days advance notice of the meeting and, in more complex matters, four working days. At this meeting the employee will have the opportunity to state their case and put forward any mitigating circumstances.

Confirmation of where the objectives or performance standards set have not been met will be confirmed in writing. The correspondence will take the same format as previous stages in this process. The letter will also advise the employee what the outcome of the meeting is.

## 5. Levels of Capability Action

Where, despite support, the employee is unable to reach the required standard of performance, the consequences of any failure to meet this standard should be explained to the employee in writing.

This will take the form of the following:

**First written warning** - *Issued at stage 2 of procedure if no or little improvement made after informal support provided.*

The employee will be informed of the precise nature of the poor performance, the level of improvement required and the time limit for achieving that improvement, review periods during the currency of the warning, the consequences of failure to achieve or maintain the improvement and the length of time the warning will remain "live" on the employee's file.

**Final written warning** - *Issued at stage 3 if no or little improvement made.*

If there is no improvement or insufficient improvement after a stage two warning, or if improvement is not maintained for the period stated in the stage two warning, the employee will be given a final written warning setting out the details as outlined above in the oral warning. The stage three warning will include a statement that a failure to improve to the required standard is likely to result in dismissal.

**Dismissal** - *Issued at stage 4 if no or little improvement made.*

If there is still no improvement or insufficient improvement after a stage three warning, or if improvement has not been maintained for the period stated above, the employee will normally be dismissed with notice or pay in lieu. Alternatively, at the Company's entire discretion, the employee may be required to perform alternative work elsewhere in the business if any suitable posts are available.

### **Length of time the warning will remain "live"**

First written warnings will normally be disregarded after six months and final written warnings normally after 12 months. After the relevant period of time, the Company will disregard the warning and remove the warning from the employee's record. In each case, the Company will specify the length of time that the warning will remain "live" but reserves the right to extend the time period in appropriate circumstances.

## 6. Conduct of the Capability Meeting

The capability meeting will be chaired by an appropriately authorised manager normally accompanied by a representative of HR. The manager chairing the meeting must make it clear to the employee and all present that the event is a capability meeting. All people present should be introduced to the employee and an explanation given as to why they are in attendance. The purpose of the meeting should be clearly stated:

1. To consider whether formal / further action should be considered
2. The relevance to the Company's Capability Procedure
3. How the meeting will proceed

The nature of the capability matter should be clearly defined, and the case outlined. Any supporting evidence should be provided, and witnesses called if necessary.

All the facts should be thoroughly examined. Sufficient evidence must be produced (this will include the signed PIP document); otherwise, the capability matter should be stopped, and further review time provided.

Any statements or evidence should be seen by both parties prior to the meeting. If any new facts emerge, a decision should be made on whether a further investigation is required; if so, the meeting should be adjourned and reconvened when the investigation is completed. The employee or their representative may similarly request an adjournment, for example to consult on a particular point arising.

The purpose of the meeting is to provide an opportunity to discuss the facts with the employee and to allow fair consideration before a decision is reached. Both parties should be given the opportunity to state their case and examine all relevant information, ask questions and call relevant witnesses if desired. A note of the capability meeting should be kept by the HR representative. The chair of meeting is responsible for asking the employee to agree a summary of the meeting by signing the Company's notes of the meeting.

An adjournment should be called before reaching a decision.

In consideration of the appropriate outcome, if any, the following non-exclusive factors should be taken into account: -

- The gravity of the performance issues
- The employee's performance record, general record, position and length of service
- Any mitigating circumstances
- The reasonableness of the sanction in the circumstances of the case
- Alternative outcomes including alternatives to formal action

The employee will be informed of the decision, any action taken and of the right of appeal in writing without reasonable delay. Dismissals under the Capability Procedure will normally be with notice.

## **7. Right of Representation**

Employees have the right to be accompanied by a fellow employee or a trade union official from a trade union in the disciplinary or appeal meeting. If an employee wishes to be accompanied, they will inform the Company of the name of their fellow employee or trade union official prior to the meeting. An employee may not ask a member of HR to accompany them.

The employee representative is there to support the employee. They are permitted to address the hearing, but not allowed to answer questions for the employee. The employee representative may request an adjournment to a capability hearing at any point if they feel the employee needs a break from the proceedings or to confer with the Employee.

## **8. Alternatives to Dismissal**

In line with ACAS recommendations, depending upon the seriousness of the capability issue and the individual circumstances, managers may consider the viability of a suitable alternative to dismissal. When circumstances are such that an alternative may be considered, the following options may be more appropriate:

- A period of suspension without pay
- Demotion (giving a set timescale for when this penalty is 'spent' e.g. 12 months, six months). If demotion involves reduction in pay, any such reduction will be introduced in a reasonable manner. After the spent demotion period, the employee will be free to apply for any suitable vacancies within the group at the level of their previous position.
  - If such action is taken, the employee's pay and benefits will be amended to reflect the prevailing pay and benefits associated with the new role. For the avoidance of doubt this may mean a pay cut or reduction in benefits.

The Company is not obligated to pursue any alternative to dismissal.

## **9. Record Keeping & Data Protection**

In order to prove a fair procedure, should this be necessary, the minutes of capability discussions and meetings will be kept together with copies of any warnings issued on the employee's personal file.

The employee will be asked to sign the PIP or any minutes relating to capability action as an accurate account of the discussions that took place. The employee will read the notes before signing and mark any amendments. Where possible, all amendments will be agreed with the Company who will also sign the PIP/minutes. The PIP/minutes will be sent to the employee without unreasonable delay after the meeting for their reference.

Whilst capability records remain 'live' on personnel files for the period specified on letters issued, access to any such records will be strictly controlled in accordance with the statutory requirements of the General Data Protection Regulations (GDPR) (refer to the Company's Data Protection policy). Records will be retained on Company systems for the period specified within the Company's Data Retention schedules.

## **10. Internal Promotions**

Where the employee is promoted, the consequences of failing to meet the necessary standards of performance for the new post should be clearly and fully explained to the employee at the time the promotion is offered.

In some cases, the employee will be promoted on the basis of a probationary period in the new job, with the condition that the Company has the right to transfer or downgrade the employee should they fail to satisfy their immediate manager that they are competent in the promoted post.

In other cases, the "promoted" member of staff will remain on the same grade and salary for the duration of the probationary period and will receive an "acting up" allowance during such time. If the satisfactory completion of the probationary period is not confirmed, the employee will not transfer to the higher grade.

## **11. Appeal**

All employees have the right to appeal against any disciplinary decision. If they wish to avail themselves of that right they should do so in writing, detailing the grounds of the appeal, within seven working days of receipt of written confirmation of that capability outcome. The grounds for appeal should be directed to the Chairperson of the disciplinary meeting.

### **11.1 Appeal Panel Members**

Appeal hearings are, where reasonably possible, carried out by the next level of authority above the capability manager or from another area of the business and will be arranged without reasonable delay. You will be notified in writing of the date of the appeal hearing.

### **11.2 Note-Taking**

An independent person either from HR or another function will be note taker at the appeal hearing.

### **11.3 Appeal Procedure**

- The Chairperson will confirm with the employee the grounds on which the appeal is being made. The employee will outline their reasons, in full, for the appeal.
- The Chairperson may ask questions as may be appropriate after the employee has stated their case for appeal.
- The Chairperson will re-outline the management case and may call witnesses.
- The employee may ask questions of the management case and/or bring their own witnesses.
- The Chairperson will clarify any issues raised.
- The Chairperson will summarise the management case.
- The employee or their representative may summarise the employee's case.
- The Chairperson will bring the meeting to a close and will then take advice and consider the facts, before reaching their decision.

## **11.4 Decision**

A meeting will be arranged at a convenient time/date to hear the Chairperson's decision, together with their reasoning, a copy of which will be supplied to the employee in writing within 5 working days of the appeal. There is only one stage of internal appeal, and that decision will be final.

## **12. Confidentiality**

Where any information is given by the employee or about the employee, their right to absolute confidentiality on all personal matters will be guaranteed by all parties.

Access to this information will be restricted to the business where appropriate and for business statistical purposes unless otherwise mandated by law.

## **13. Complaints**

Any employee who is dissatisfied with the application of this policy may raise their concerns in writing to their first Line Manager who will address their concerns with HR.

If this happens, the Chairperson will consider whether to suspend the capability procedure for a short period whilst the complaint is dealt with or to deal with the complaint and disciplinary matter concurrently.

## **14. Breach of Policy**

Breach of the Capability Policy and Procedure by employees will be regarded as misconduct and could lead to disciplinary action.