



The Michael Lonsdale Group inclusive of (Michael Lonsdale Ltd, Michael J Lonsdale Limited, Michael J Lonsdale (Electrical) Limited and E7 Building Services Limited.) policy on:

# Capability Policy and Procedure

## Introduction

1. This capability policy sets out what happens when you have not been able to perform your duties to the required standard. It describes the support available to encourage improvement and the formal action that may be taken. The policy provides a structured approach that should ensure you are treated fairly and consistently, considering your circumstances.
2. By capability we mean the combination of skills, aptitude, ability and knowledge required to do a job.
3. Capability is a different issue from misconduct. This capability policy deals with situations where you are genuinely trying to perform to the required standard but are unable to do so. The capability policy does not cover deliberate failure to perform, poor attitude, or failure to meet standards as a result of carelessness or negligence. These are all matters of misconduct, and they are dealt with under our separate disciplinary policy.
4. This policy applies to all permanent and fixed term staff members except during probation. This policy is non-contractual and may be amended from time to time. Parts of the policy, including time limits, may also be varied as appropriate.

## Principles

5. You are expected to be capable of carrying out the work you are engaged to do to the required standard. How well you do your job will be measured against standards set by your manager. Your manager will discuss these standards with you and realistic objectives and outcomes.
6. We will put the following in place. This should help minimise the need to use the capability procedure.
  - Clear management support.
  - Effective recruitment and selection.
  - Effective initial induction and further training.
  - Regular reviews with your manager.
7. Your individual circumstances will always be considered. For example, the requirements of your post, the impact of changes in the workplace, your length of service, your personal circumstances and previous performance record. We recognise that some capability issues may be temporary, because of illness or personal





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circumstances, and any drop-in capability may be short-lived while you deal with these issues. We may also seek advice from our occupational health service if appropriate and you consent to any occupational health report being provided to us.

8. You will not be dismissed without prior warning that your performance requires improvement, unless:
  - your work performance poses serious operational risks
  - on investigation we find that your poor performance is a matter of gross misconduct covered by the disciplinary policy.
9. We will put additional support arrangements or reasonable adjustments in place for staff who have a disability if appropriate. If an adjustment might help, you should speak to your manager, examples of adjustments may include:
  - making documents available in an accessible format;
  - a change to working hours;
  - providing support or supervision to help staff who are experiencing difficulties at work

## Procedure

### Informal action

10. If your job performance does not meet required standards, your manager will first seek improvement through informal action. Your manager will meet with you to discuss your poor performance. These informal discussions should:
  - clarify the required standards
  - identify areas of concern
  - identify any training needs
  - note whether there are any issues affecting your performance, such as ill-health
  - set targets for improvement
  - agree the way forward to achieve the required standard
  - agree a timescale for improvement.
11. Managers must be aware that any improvement may not be instant, and much will depend on the reasons for the poor performance. If ill-health or disability is affecting your performance, you should raise this with your manager so that this can be considered. We will consider whether any reasonable adjustments could be made to your working arrangements. If we seek to see your medical records, we can only do this with your consent. If you decline permission for us to do this, we will have to make our decisions based on the information available to us.
12. Your manager will explore with you whether any agreed adjustments could be made to improve performance. For example: a temporary change in working hours; working from home; physical adjustments to your work area. If adjustments are agreed, we will agree a time frame so you can get used to the new arrangements.





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13. Your manager will monitor your progress and meet with you regularly to discuss this. At the end of the agreed timescale, your manager will meet with you to provide overall feedback on your performance.
14. At this review meeting, if you have made the required improvements, your efforts will be recognised, and you will be told that the process is now complete. This will be confirmed to you in writing.
15. If you have not made the required improvements by the time of the review meeting, you will be informed that the process will now become formal. Also, if reasonable adjustments have been made, and there is no or insufficient improvement in your performance, the process may be moved to the formal stage. This will be confirmed to you in writing.

## Formal action

### Right to be accompanied

16. You have the right to be accompanied at any of the formal meetings set out below by a union representative or a colleague who is employed by the Michael Lonsdale Group. You may not be accompanied by a lawyer. Your companion may make representations for you but will not be able to answer questions on your behalf.
17. Any union representative must either be on the union's staff or must be certified as being able to act as a companion in formal meetings. If you wish to be accompanied, you must tell the manager conducting the meeting or hearing who your companion will be in good time before the hearing.

### First capability meeting

18. If informal action has not been successful and your performance is still not up to the required standard, your manager will invite you to a capability meeting.
19. The capability meeting aims to support you to achieve the required standard of performance. You will be invited by letter or email to attend the meeting to assess your performance formally. You will be given full details of why your performance is unsatisfactory. The meeting will be with your manager, and there may be an external HR adviser present to provide advice and guidance.
20. The meeting will cover the nature of your poor performance, what steps you have already taken to improve your performance improvement, any mitigating circumstances – personal or health, and the likelihood of improvement. The meeting is a two-way discussion between you and your manager, and you will have the opportunity to make any points you wish during the discussion.
21. Your manager will produce a specific performance improvement plan (a template is available). A draft of the plan should be given to you within five working days of the





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meeting, and you will have the opportunity to comment. The final plan will be given to you within five days of your comments being received. You will be notified if it is going to take more than five days to get the plan to you.

22. In addition, your manager may give you a first written warning following the first capability meeting. The **first written warning** and the performance improvement plan will detail:
  - clear expectations around behaviours in the role
  - the required standard of performance to identified targets, a realistic timescale for improvement, considering your length of service and the performance difficulties
  - the training and support available
  - a schedule of review meetings with you
  - what will happen if you fail to improve within the review period, or if there is any further unsatisfactory performance.
23. If you have an underlying health condition or a disability, the performance improvement plan will include any advice occupational health have given about reasonable adjustments.
24. The first written warning will normally remain 'live' for a period of 12 months from the date of the first capability meeting. The 'live' period of the warning may be extended, in more serious cases of poor performance. After the 'live' period the warning will remain permanently on your HR record but will be disregarded when deciding the outcome of any future capability proceedings.
25. At the end of the review period, we will hold a review meeting with you. At that meeting, we will review your performance against the objectives set out in the performance improvement plan. If you have shown satisfactory improvement, we will confirm in writing to you that no further action will be taken. However, if you have shown no or unsatisfactory improvements in your performance, we will arrange a second capability meeting, as set out below. In exceptional circumstances, where we feel that there has been substantial but insufficient improvement, the review period may be extended.

## **Second capability meeting**

26. If your performance does not improve during the review period set out in the first written warning, or if there is further evidence of poor performance whilst your first written warning is still 'live', we may decide to hold a second capability meeting.
27. In exceptional circumstances where we feel that there is no likelihood of any improvement, we may decide to hold a capability hearing so by-passing the second capability meeting. Clear reasons will be given for this.
28. At the second capability meeting, your manager will discuss with you the reasons for your poor performance and may agree a further performance improvement plan with you. This revised plan might include adjusting the objectives and measures set out in





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your current plan or agreeing an extension to the timeframes. Again, we will consider whether your performance may be related to ill-health or disability and whether any further reasonable adjustments could be made to your working arrangements.

29. In addition, if you have failed to demonstrate any or sufficient improvement in your performance since the first capability meeting, we may give you a **final written warning**, setting out:
- the areas in which you have not met the required performance standards
  - targets for improvement
  - any measures, such as additional training or supervision, which will be taken with a view to improving your performance
  - a period for review
  - what will happen if you fail to improve within the review period, or if there is any further unsatisfactory performance.
30. The final written warning will normally remain 'live' for a period of 12 months from the date of the second meeting. The 'live' period of the warning may be extended, at our discretion, in serious cases of poor performance and/or where you have shown very limited improvement over the review period.
31. After the 'live' period the warning will remain permanently on your HR record but will be disregarded when deciding the outcome of any future capability proceedings.
32. At the end of the review period, we will hold another meeting with you to review your performance against your objectives. If you have shown satisfactory improvement, we will confirm to you in writing that no further action will be taken. If, however you continue to show no or insufficient improvement, we may invite you to a capability hearing. In exceptional circumstances, where we feel that there has been substantial but insufficient improvement, the review period may be extended.

## Capability hearing

33. We may decide to hold a capability hearing if:
- your performance has not improved sufficiently within the review period set out in the performance improvement plan
  - where we feel that there is no likelihood of any improvement following the first capability meeting, so by-passing a second capability meeting.
  - your performance is unsatisfactory while a final written warning is still 'live' or
  - your performance has been grossly negligent and warrants dismissal without the need for a final written warning.
34. If you are invited to a capability hearing, you will be informed, in writing:
- of the concerns relating to your performance
  - the reasons for those concerns
  - the potential outcomes if it is determined at the hearing that your performance has been unsatisfactory.





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35. You will be provided with any relevant information gathered during the previous capability meetings and process and any documents that may be used at the capability hearing, which may include witness statements.
36. You will be informed of the date, time and place for the capability hearing. The hearing will be held as soon as practical, and you will be given a reasonable amount of time to prepare (usually five working days). We will try to be flexible when organising a capability hearing and will take reasonable steps to accommodate your personal circumstances.
37. A hearing manager will be appointed to conduct the hearing. The hearing manager will be a Director, or someone assigned authority by the Director. An external HR representative will attend the meeting to provide advice and guidance.
38. If you cannot attend the first date scheduled for the hearing, you should tell the hearing manager immediately. We will do our best to rearrange the meeting within a reasonable timescale. You must make every effort to attend the hearing. If you fail to attend without good reason, this may be treated as misconduct. If you fail to attend the rescheduled hearing, the hearing manager may have to proceed with the hearing in your absence and make a decision based on the available evidence. If your representative cannot attend the hearing or any rescheduled hearing and will not be available for more than five working days, we may require you to choose another representative.
39. At the hearing, your manager will set out the concerns about your performance and present any relevant evidence. You will be given every opportunity to respond, ask questions and make representations. Witnesses may attend the hearing to give evidence relevant to the issues about your performance, if the hearing manager has been given enough notice.
40. At the hearing, the hearing manager will aim to:
  - identify the likely causes of your poor performance including any reasons why measures taken so far have not resulted in improvement
  - identify whether any further measures, such as additional supervision or training, may improve performance
  - where appropriate discuss targets for improvement and a timescale for review
  - if dismissal is a possibility, consider whether there is any practical alternative to dismissal such as redeployment.

## Outcomes

41. The possible outcomes of this meeting include, but are not limited to, the following.
42. Further performance improvement plan





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In exceptional cases where it is felt that a substantial improvement in your performance is likely within a further reasonable review period, we may decide to set a further review period. A further capability hearing will be convened if you do not demonstrate sufficient improvement during the extended review period.

#### 43. Dismissal with notice

Where it is clear from the evidence that no reasonable further support or time will make a difference to the outcome or where there has been further poor performance during the 'live' period of a warning, you may be dismissed with notice or payment in lieu of notice.

#### 44. Redeployment to another position

The hearing manager may consider that this is appropriate as an alternative to dismissal. This option will depend on a suitable post being available and may include redeployment to a post at a lower level. The terms of the redeployment will be set out clearly and will include a trial period of two months. At the end of the trial, you may be confirmed in the new post, or either you or the Michael Lonsdale Group may say that the post is not suitable.

#### 45. The hearing manager will inform you of their decision and the reasons for it, usually within five working days of the capability hearing.

### **Appeal meeting**

46. You may appeal against the decision taken at the capability hearing. Your appeal must be in writing, state the full grounds of appeal and be sent to the person named in the outcome letter within five working days of receipt of the hearing manager's decision.

47. If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the appeal. However, if the appeal is successful, you will be reinstated without loss of continuity of employment or pay.

48. You will be informed of the date, time and place of the appeal hearing. The appeal hearing will be conducted by an appeal manager who, if possible, has not previously been involved in the case. The appeal manager will be a Director, or someone assigned authority by the Director. The hearing manager and someone from HR may also attend the hearing. You will be entitled to be accompanied at the appeal hearing as set out above.

49. If you raise new matters in your appeal, we may have to adjourn the hearing so that we can carry out further investigations. Any additional information from those investigations will be provided to you in advance of the appeal hearing.

50. At the discretion of the appeal manager and depending on the circumstances of the case, the appeal may be:

- a complete re-hearing of the matter





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- a review of the fairness of the original decision taking account of the procedure followed and any new evidence that may have been submitted.

51. Following the appeal hearing, the appeal manager may:

- confirm the original decision
- revoke the original decision
- substitute a different sanction.

52. You will be informed of the appeal manager's decision in writing, usually within five working days of the appeal hearing. There is no further right of appeal.

## **Confidentiality and data protection**

53. You and anyone accompanying you (including witnesses) must not make electronic recordings of any meetings or hearings conducted under this procedure.

54. The data collected by the Michael Lonsdale Group on your health is categorised as sensitive personal data as defined under data protection legislation. The data is collected for the sole purpose of managing your performance to determine the management approach and support required.

Name: Gary Herbert

Signature:

For and on behalf of the  
Michael J Lonsdale Group Board of Directors  
(Michael J Lonsdale Limited/ Michael J  
Lonsdale (Electrical) Limited  
E7 Building Services Limited

Position: Managing Director

Date: 1<sup>st</sup> October 2022

