**Appendix 8**

**MODEL LETTER CALLING AN EMPLOYEE TO A CAPABILITY HEARING**

*For use where all reasonable efforts to support the employee in respect of their alcohol or substance misuse problem to achieve a satisfactory level of performance or attendance have been taken and proved unsuccessful and redeployment is not appropriate or feasible.*

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|      |  |
| PERSONAL |  |

Dear

# CAPABILITY HEARING - MANAGING SUBSTANCE MISUSE PROCEDURE

I refer to the meeting held on \_\_/\_\_/\_\_ in the presence of \_\_\_\_\_\_\_\_\_, concerning your unacceptable performance and/or attendance\* due to your alcohol / substance misuse\* problem.

I have been informed by your line manager that the required improvement has **not** occurred.

Although I continue to recognise your underlying alcohol/substance misuse\* problem and am sympathetic to your situation, I have determined, based on the recommendation of your line manager, to progress the matter toa Capability Hearing.

The basis of my decision is due to you not having successfully addressed your alcohol / substance misuse\* problem and achieved the required improvement in your performance and/or attendance\*.

Redeployment / retraining does not seem to be an option, as you appear to be unable to achieve the required performance and/or attendance in any capacity in the foreseeable future.

You are therefore requested to attend a Capability Hearing which will take place on \_\_/\_\_/\_\_ at \_\_\_\_\_\_\_\_ in \_\_\_\_\_\_\_\_\_\_\_.

You have the right to be accompanied at the Hearing by a trade union representative or work colleague. I will chair the Hearing and will be accompanied by an HR Adviser. Your line manager will also attend to present a report on

* Your performance and/or attendance\* record
* the content of any monitoring meetings and
* the measures taken to assist you to improve your performance / attendance\*, and the support given to assist you to address your alcohol / substance misuse problem including any adjustments to duties or work practices.

I have to inform you that the purpose of the Hearing is to consider whether it is appropriate to terminate your employment on grounds of lack of capability. This would be due to your being unable to fulfil your contractual responsibilities in relation to work performance / attendance\* standards as a result of your alcohol/substance misuse\* problem. You need to be aware that termination of employment is being contemplated and could be an outcome of the Hearing. I would emphasise that all other reasonable options will be considered at the Hearing, as an alternative to termination of employment, before any final decision is made.

You will be given the opportunity at the Hearing to provide a full response as to why you have been unable to successfully address your alcohol / substance misuse problem and achieve and maintain an acceptable level of performance and/or attendance\* at work. You will also be given the opportunity to put forward any suggestions as an alternative to termination of employment and to present any evidence you wish to be taken into account.

I intend to conduct the Capability Hearing using the following procedure:

1. Firstly, I will explain the purpose and format of the Hearing and deal with any procedural issues that may arise
2. I will then ask the manager who has been monitoring your progress to present a report on your performance and/or attendance\*, including the measures taken to assist and support you to address your alcohol / substance misuse problem and improve your record in this respect
3. I will ask the manager to explain why he / she considered it necessary to recommend progressing matters to a capability hearing, meaning that termination of employment on grounds of lack of capability was now being contemplated. I will also refer to the content of the latest occupational health medical report and any other relevant previous reports (or for teachers, additional medical evidence)
4. You and / or your companion will then have the opportunity to ask any questions of the manager
5. I will then ask you to respond and to present your case, indicating whether you have any suggestions to put forward as an alternative to termination of employment and whether you have any evidence you wish to present and be taken into account
6. I will consider any suggestions you put forward and any other information you present, including any evidence (I may need to adjourn the meting at this point)
7. My colleague and I will then ask any questions of you and the manger and there will be an opportunity for a general discussion during which both you and the manager can raise relevant issues not covered earlier
8. You will be given the opportunity to conclude your response by highlighting any aspects you consider to be particularly relevant or anything further in support of your case
9. I will allow adjournments during the course of the Hearing where I deem they are necessary
10. At the end of the Hearing an adjournment will occur. During the adjournment, I will consider all relevant issues that emerge from the hearing. I will then decide whether termination of employment on grounds of lack of capability is appropriate or whether an alternative course of action can be identified.
11. I will then notify my decision to you in writing, along with the reasons for arriving at that decision. I would hope to reach a decision within 24 hours of the Hearing although the length of the adjournment will, of course, depend on the issues that I need to consider

You are expected to take all reasonable steps to attend the Hearing as arranged. I have to advise you that should you, in my view, fail to attend the Hearing without good and sufficient reason, it is likely that the Hearing will proceed and a decision will be taken in your absence.

If the companion you select is unable to attend on the above date you have the opportunity to suggest another date. This alternative date must suit everyone involved and be no more than five working days after the original date – otherwise you will need to select another companion or attend the Hearing unaccompanied.

Please contact me as soon as possible to confirm that the above date and time for the Hearing is suitable, whether you will be accompanied and, if so, by whom.

Yours sincerely,

# NAME OF OFFICER CONDUCTING MEETING

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| --- | --- |
| Copy to: | HR Adviser |
|  | Personal File |
|  |  |

\* Delete as appropriate