



The Bar Council



ADR Resolutions  
Management Consultancy

## Model capability policy and action plan template

<b>Purpose:</b>	To assist barristers' chambers to fulfil their obligations to their employees.
<b>Scope of application:</b>	Those who are responsible for employees in chambers.
<b>Issued by:</b>	Chambers Management Panel
<b>First issued:</b>	September 2024
<b>Last reviewed:</b>	September 2024
<b>Status and effect:</b>	Please see the notice at end of this document. This is not "guidance" for the purposes of the BSB Handbook I6.4.

The Bar Council's Chambers Management Panel has worked with [ADR Resolutions LLP](#) to produce the following template capability policy and action plan for barristers' chambers.

The policy is designed to help barristers' chambers fulfil their legal obligations to their employees.

A summary of the relevant obligations can be found [on the policies and procedures for chambers webpage](#). It is recommended that you familiarise yourself with the relevant requirements.

This document has been prepared in good faith and does not constitute legal advice. It is therefore recommended that you instruct a solicitor or [a direct access barrister](#) specialising in employment law to review the final version of it before submitting it for approval and adoption by your management committee or otherwise.

## **Important notice**

This document has been prepared by the Bar Council to assist barristers on matters of professional conduct and ethics. **It is not “guidance” for the purposes of the BSB Handbook I6.4, and neither the BSB nor a disciplinary tribunal nor the Legal Ombudsman is bound by any views or advice expressed in it.** It does not comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it. For fuller information as to the status and effect of this document, please see [important information and disclaimer](#).

## Capability policy

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**Note for author:** A capability policy is also known as a performance review policy. You can find [guidance on conduct and capability procedures when managing performance](#) on the ACAS website.

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### Our commitment

We are committed to creating an inclusive and positive environment in which everyone considers they are being treated fairly and equitably. We expect everyone to carry out their work and conduct themselves in a professional manner that promotes our values and the interests of [name of Chambers].

This policy explains what will happen if for any reason you are under performing in your role. It sets out a framework for overcoming any difficulties that you are facing and focuses on encouraging improvement through clear objectives, guidance and support.

We will follow a fair procedure where your abilities and/or performance fall below the standards that we require and will give you a fair chance to improve. Where we can, we will aim to resolve things informally in the first instance. We may not follow every step of the procedure in every case, as there may be occasions when it is appropriate to escalate or condense parts of it.

We hope you never need this policy, but if you do, your manager and the [title of person responsible for handling HR issues] are here to support you.

We know that being subject to performance management can be difficult. We are committed to your wellbeing and this policy signposts you to other support if you need it.

This policy is not part of your employment contract, and we can change it at any time. If you have any questions, please talk to the [title of person responsible for handling HR issues].

### What and who is this policy for?

The policy describes how we will deal with performance related issues and applies to all our employees, regardless of the nature of their contract with Chambers.

In this policy:

- 'We'/'us' refers to [name of Chambers]
- 'You' means all employees of [name of Chambers]
- 'Manager' means the person who has responsibility for you

This policy does not apply to unacceptable behaviour that is misconduct. That will be dealt with through our **Disciplinary Policy**.

It also doesn't apply to capability on medical grounds, which is covered by our **Sickness Absence Policy**.

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**Note for author:** you can find a model disciplinary policy on our [Ethics and Practice Hub](#). The Bar Council will be producing a model sickness absence policy in 2025/26. In the meantime, there is some information about what the latter should contain and where you can find other models on our [Policies and Procedures for Chambers webpage](#).

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## Key principles

### Fairness

We will ensure that you are treated fairly, and we recognise that the reasons for poor performance or a lack of capability may be outside of your control and symptomatic of underlying problems either at work, or in your personal life. To that end, you will always be given an opportunity to explain your circumstances before any decision is made.

Before we implement a formal capability process, we will examine the circumstances carefully, try to identify any underlying causes, and provide you with support to improve your performance and meet the standards required of you.

### Confidentiality

It is the responsibility of the people involved in a capability process to ensure that the matters discussed remain confidential. However, there may be situations in which it is necessary to provide information to others to ensure that the process is handled effectively and fairly.

Inappropriate access to, or disclosure of, personal or sensitive personal data (whether verbally or in writing) constitutes a data breach and must be reported to the [title of person responsible for handling GDPR issues]. It may also constitute a disciplinary offence which we may deal with under our **Disciplinary policy**.

## **Support**

We know that being subject to performance management can be stressful, so if there are things we can do to reduce the impact of the process on your wellbeing then, provided they are appropriate, we will. Sources of support are outlined at the end of this policy under 'Further information and support'.

## **What do we mean by capability?**

By 'capability', we mean your skills, aptitude, health, or any other physical or mental quality in performing the job that we have employed you to. It is different to conduct, which is about your behaviour while working for us.

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**Note for author:** [section 98\(3\)\(a\) of the Employment Rights Act 1996](#) states that "capability, in relation to a member of staff, means their capability is assessed by reference to skill, aptitude, health or any other physical or mental quality."

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We determine your capability in accordance with the duties and responsibilities that you have been assigned through your current job description. In assessing your capability, we also refer to the person specification associated with your role, which sets out the experience, knowledge and, where applicable, qualifications, that we have determined are required to successfully perform it.

Under this policy, you are responsible for achieving and maintaining the standards that we expect of you in terms of your performance at work and for working with your line manager to discuss your performance, identify your developmental needs, and participate in the training required to meet them.

Your manager is responsible for ensuring that you are aware of the standards that we expect of you, for meeting with you regularly to discuss your progress and help you improve, and for coordinating any training designed to ensure that you can carry out your role.

If your manager has concerns about your performance or capability, they are expected to act promptly to find out the cause and identify the ways in which they can support your improvement. In most cases, your manager should be able to do this informally.

### **Informal action**

Most performance issues at work are relatively minor and can be resolved informally. Informal action will usually take the form of a conversation between you and your manager, who may provide advice, organise coaching or training, and/or set clear objectives and review your progress against them over a set period.

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**Note for author:** when deciding whether to take informal or formal action under this policy, your managers should consider any evidence they may have relating to the employee's poor performance, including any complaints they may have received from colleagues or people who are external to Chambers, their own observations of the employee, and any available records that might serve to demonstrate that the employee is not meeting the standards required. They should also consider any mitigating circumstances that they are aware of, including any evidence of accountability on the part of the employee. This may have been demonstrated through requests for further support and/or training, or other actions that the employee has taken to try and address the problem(s).

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During the meeting, your manager will:

- Outline their concerns and expectations of you, and the impact that your underperformance may have had on others, including Chambers
- Listen to your explanation carefully
- If required, ask further questions to help them understand your position and check that they have all the relevant information
- Discuss any support needs that you may have, and any improvements that they feel will be necessary for you to make
- Confirm any review and monitoring periods, if applicable, and make you aware of the action they may take if you fail to improve sufficiently during those periods

Following the meeting, your manager will send you a written summary of your discussion. They may also share the summary with the [title of person responsible for handling HR issues], which will remain 'live' for 6 months.

The summary will include a review period of between one and two months, during which time you will be expected to address the problems your manager has identified.

If your discussion with your manager fails to result in sufficient improvement, or if your manager considers the issues with your performance to be too serious to deal with informally, then they may take formal action instead.

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**Note for author:** if your employee demonstrates some improvement but their manager feels they are still not meeting expectations, or if a period of absence during the review results in your employee having had insufficient time to improve, then you may wish to extend the informal stage of the process by a further 4 weeks.

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### **Formal action**

If your manager considers it necessary to take formal action, they will invite you to a capability meeting. This may arise if:

- Minor performance issues they have discussed informally with you have not been corrected, or have not resulted in the required improvement
- They identify more significant performance issues that are having a greater impact

### **Invitation to a capability meeting**

If your manager decides that they need to take formal action, they will invite you to a capability meeting. You will receive at least 5 working days' notice of the meeting and in their invitation, your manager will set out their concerns about your performance and any evidence that they are relying on to demonstrate how your performance has fallen short of the required standards.

The [title of person responsible for handling HR issues in Chambers] may be present during the meeting to advise on the process, policy and procedure. Your manager may record the meeting with the consent of those in attendance, to ensure that

accurate notes can be taken. They may also appoint another person in Chambers to attend the meeting to take a summary note of the key issues and the outcomes that have been reached.

You and, where applicable, the person accompanying you, may not record the meeting, either obviously or covertly.

### **Attending the meeting**

You should take all reasonable steps to attend the capability meeting. If you, or the person who be accompanying you, can't make the date that your manager has proposed, you may suggest an alternative one. You should set out the reasons for your request in writing and the date that you suggest should be within 5 working days of the one proposed by your manager. They will then consider your request and confirm whether they can accommodate it.

Where you fail to attend a capability meeting more than once and without compelling reasons, your manager may reach a decision in your absence, based on the evidence available at the time.

### **Reasonable adjustments**

If you require any reasonable adjustments during the capability process you should raise this with the person who will be conducting the meeting in sufficient time for them to make any arrangements necessary.

### **The capability meeting**

During the initial capability meeting, your manager will:

- Explain their concerns about your performance and any impact, providing examples of how your performance has fallen short of the required standards
- If applicable, confirm any action already taken to support you to improve your performance
- Give you the opportunity to respond to their concerns and set out any mitigating factors that you think your manager should consider
- Set out their proposals for remedial measures, including any support, training, or supervision
- Explain the likely consequence of further instances of poor performance or failure to improve within a specified time frame, including the next stage of the procedure in these circumstances and any relevant sanctions or warnings



Your manager may ask further questions to help them understand your response(s) and check that they have taken everything necessary into consideration. They will also give you the opportunity to ask questions of your own.

### **Your action plan**

As part of the remedial measures your manager would like you to take, they will discuss and agree an action plan with you to address their concerns about your performance.

Your action plan will include details of their concerns about your performance and the required standards. It will also outline the action that you need to take to improve and any support that you will receive to help you achieve their objectives for you. The support that your manager suggests may not be restricted to their own provision of clear and constructive feedback to you. It could also include coaching or mentoring from another person in Chambers, or from an appropriate person outside of our organisation.

Your manager will allocate a realistic review and monitoring period for each action and use your plan to explain how they will assess your performance during that period. They will also identify a regular time for you to meet to discuss your progress against the action plan and review the support that you are receiving under it.

### **After the meeting**

After the meeting, your manager will aim to share a copy of the notes of your discussion and your action plan with you within 5 working days. If this is not possible for any reason, they will keep you informed and send you the documents as soon as is possible.

If your performance fails to improve during the review and monitoring period that your manager has set for you, then you will be invited to further capability meetings. During those meetings, your manager may agree to revise and extend your action plan. Depending on the stage that the process has reached, they may also inform you that they will be taking further action, in the form of a sanction or warning.

Where your manager takes further action, they will inform you of their decision in writing within 5 working days. If this is not possible they will let you know when

you can expect the decision and send you the relevant documents as soon as is possible.

If further action is justified, it may take one of the following forms:

### **1. Verbal warning**

If the lack of improvement with your performance is minor, or your manager considers you might not have reasonably realised there was a continuing problem, you might receive a verbal warning.

A note of the verbal warning will be placed on your file and will remain 'live' for six months. It will be disregarded for disciplinary purposes after that time, subject to your satisfactory performance.

### **2. First written warning**

A first written warning might be issued in circumstances where you have failed to demonstrate sufficient improvement following formal action, or if your perceived shortcomings are enough to warrant more formal action being taken immediately.

The warning will set out the nature of your manager's concerns and improvements that they require you to make. It will include a revised review and monitoring period and, if necessary, a revised action plan.

The warning letter will be placed on your file and will remain 'live' for 6 months. It will be disregarded for disciplinary purposes after that time, subject to your satisfactory performance.

### **3. Final written warning**

If you have a current 'live' written warning about your performance, then an insufficient lack of improvement may warrant a final written warning.

Before you are issued with a final written warning, you will be invited to a further capability meeting. During the meeting, you will be informed that further failure to demonstrate immediate improvement may result in dismissal or some other contractual penalty such as a demotion [or loss of bonus].

The warning will set out the nature of your manager's concerns and improvements that they require you to make. It will include a revised review and

monitoring period and, if necessary, a revised action plan. It will also explain how you can appeal against the decision.

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**Note for author:** the review and monitoring period can be significantly shorter at this stage.

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The warning letter will be placed on your file and will remain 'live' for 12 months, but in exceptional circumstances could remain in effect for longer. It will be disregarded after that time, subject to your satisfactory performance.

#### **4. Dismissal or action short of dismissal**

If you have a current 'live' final written warning and your performance has not improved since it was issued, you may be dismissed with notice. We may also decide on another action, such as demotion and/or loss of pay [, or loss of bonus].

If the decision is made to dismiss you, we will write to you explaining why you have been dismissed and when your last day is. You will be entitled to your period of notice or payment in lieu of notice, as set out in your employment contract. We'll also explain how you can appeal.

#### **Appealing the decision**

You have the right to appeal against the outcome of formal capability procedures at the final written warning and dismissal stages if you are not content with the process that was followed or feel that the outcome was wrong.

The purpose of an appeal is to review the decision and not to re-hear the matter or consider it afresh. E.g. suitable grounds for an appeal could be based on the process that your manager followed to make their decision, or that the outcome was too severe, manifestly wrong or, in the case of dismissal, unfair.

If you wish to make an appeal, you should do so in writing and within 5 working days of you receiving the disciplinary outcomes letter from your manager. If you do not lodge an appeal within 5 working days, you will be deemed to have accepted the decision of your manager and will have no further right to challenge it thereafter.

Your submission should explain which parts of the letter you believe are wrong and why you disagree with them. You should not include additional evidence unless you

can demonstrate it is relevant to the grounds for appeal and was not available during the capability process.

You should submit your appeal to the [title(s) of senior leaders within Chambers who have been given responsibility for handling disciplinary appeals]. If the complaint relates to the [title(s) of senior leaders within Chambers who have been given responsibility for handling disciplinary appeals], you should write to the [title(s) of alternative senior leaders within Chambers who have been given responsibility for handling disciplinary appeals] instead (the 'Appeal Manager').

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**Note for author:** ideally, you should appoint different people to handle each stage of the process i.e. the capability meetings and appeal.

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Once they have received your appeal, the Appeal Manager will send you an invitation to attend an appeal meeting with them within 5 working days. If this is not possible for any reason, they will keep you informed and arrange for the meeting to take place as soon as practicable. If you are appealing against a decision to dismiss, the appeal may be heard after the dismissal has taken effect.

Depending on their involvement in the capability process to date, the [title of person responsible for handling HR issues in Chambers] may be present during the meeting to advise on the process, policy and procedure. The Appeal Manager may record the meeting with the consent of those in attendance, to ensure that accurate notes can be taken.

You and, where applicable, the person accompanying you, may not record the meeting, either obviously or covertly.

During the meeting, the Appeal Manager will give you an opportunity to put forward any concerns that you have about the original decision-making process and outcomes, and to raise any new evidence that is relevant to the capability process that you were involved in and was not available at the time. The purpose of the appeal meeting is to clarify whether the procedure that your manager followed was fair, and/or that the decision taken and/or actions recommended by your manager were fair. To that end, you may not use the appeal meeting to request a complete re-hearing of the issues raised, nor to present new evidence that was available prior to your appeal and/or is not directly connected to your complaint.

The Appeal Manager will consider your appeal and either provide you with a verbal decision at the end of your appeal meeting, or as soon as practicable thereafter. They will also confirm their decision, in writing, within two working days of having relayed it to you.

The Appeal Manager's decision will be final and will take **one** of three forms:

- Upheld (i.e. the procedure and/or outcomes were fair)
- Overturned (i.e. the procedure and/or outcomes were not fair)
- Partially upheld (in this case they will explain which elements are upheld and which are not)

### **Appeal against dismissal**

If you have been dismissed following a capability process and you successfully appeal this decision, then the decision to dismiss will be revoked with no break in your length of service.

Depending on the circumstances, dismissal may be replaced by an alternative sanction. If you appeal against dismissal and your appeal fails, the effective date of termination will be the date on which you were originally dismissed.

### **Being accompanied at meetings**

Any individual who is involved in a formal capability process may be accompanied at the capability and appeal meetings by a neutral colleague or a full-time trade union representative, but not by anyone acting in a legal capacity.

You do not have to be accompanied but, if you do wish to be, you must also notify the person who will be conducting the meeting at least two working days in advance of the meeting. You must provide them with details of who will be there and in what capacity and allow them sufficient time to make any arrangements necessary.

During the meeting, the person that you have chosen to accompany you can lend you their support, or take a more active role by:

- Summarising or explaining your position
- Asking questions or seeking clarification on your behalf

However, they will not be permitted to answer any questions that are put to you by the person who is conducting the meeting.

## Overlapping capability and grievance cases

If you raise a grievance at any stage of the capability process, your manager will decide whether the procedure should be suspended until the matter has been resolved under our **Grievance policy**. Their decision will depend on:

- The relevance of your complaint to the capability process
- The severity of the complaint
- The seriousness of the performance issues that they are working with you to resolve

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**Note for author:** you can find a model grievance policy on our [Ethics and Practice Hub](#)

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You must not attempt to raise a grievance simply to prevent your manager from attempting to improve your performance through a capability process. If any investigation into your grievance finds it to be deliberately false, mischievous or vexatious, we will take this very seriously and it will be considered as misconduct. This may result in disciplinary action against you, which will be dealt with through our **Disciplinary policy**.

## Further information and support

We recognise that being involved in a disciplinary process can be worrying. [Our confidential Employee Assistance Programme / The [Assistance Programme advertised by the Bar Council, Legal Practice Management Association, and Institute of Barristers' Clerks](#) is available to their respective members, and] is available 24 hours a day and can provide support if you are anxious, stressed or want to talk to someone independent.

If you have any questions about this policy, you can contact the [title of person responsible for handling HR issues].

## Version control

Version	Description of update	Updated by	Date
1.0	Approved by [e.g. Chambers Management Committee]		[e.g. Sept 2024]
[e.g. 2.0]	[e.g. Revised at paragraphs 10 and 11 to refer to new legislation]	[e.g. Chambers Director]	[e.g. Dec 2025]

## Action Plan

Name of Employee	Michael Ross
Job Title of Employee	Senior Associate
Name of Line Manager	Harvey Spector
Date of Action Plan	10 September 2024
Date of Final Review	9 March 2025

Summary of the concerns and shortcomings in performance and description of the standards required	
<p>Mr Ross has responsibility for the supervision of two trainees, both of whom have complained that he rarely meets with them and that, when he does provide feedback on their work, it is purely intended to criticise and is therefore unhelpful.</p> <p>This issue has been addressed with Mr Ross previously and he has been provided with guidance on his approach, but he has shown no improvement.</p>	<p>One of the measures of success in Mr Ross' job description is the effective management and development of those he is responsible for supervising. His general responsibilities include responsibility for the overall performance and delivery of those individuals, and their overall development.</p> <p>The competencies that we expect of a Senior Associate include working positively with colleagues, sharing information willingly, being open and forthcoming, supporting and coaching reports to improve their performance and develop their skills, giving regular and constructive feedback when supervising colleagues, and considering the wider and long-term impact of one's own actions and decisions.</p>



<b>Agreed objectives for upcoming work and timescale for expected improvement</b>	
Mr Ross to begin holding regular, weekly, one to ones with both trainees (separately).	Immediate
Mr Ross to actively participate in a leadership and management development training course.	Before the end of September 2024
Mr Ross to consistently provide both positive and constructive feedback to his trainees which is specific and designed to help them improve.	Before 9 March 2025

<b>Any training and support to be provided</b>
<ul style="list-style-type: none"> <li>Leadership and management development training course to be arranged for Mr Ross by the HR Department</li> <li>Mr Spector to ask the Chief Operating Officer, Donna Paulsen, if she will mentor Mr Ross for a minimum period of 6 months</li> <li>Mr Spector to offer general support and guidance to Mr Ross during their weekly one to one meetings and outside of them, as and when necessary</li> </ul>

<b>How performance will be monitored</b>
<ul style="list-style-type: none"> <li>Through the observations of Mr Spector and during the regular meetings between Mr Spector and Mr Ross that are designed to assess Mr Ross' improvement to date and discuss any further support that might be required (to be logged in this action plan)</li> <li>Through feedback from colleagues, including the trainees that Mr Ross is responsible for supervising</li> </ul>

Review Log	
Date	Comments
24 September 2024	<p>Mr Ross has started to hold regular meetings with his trainees, although both have said that his approach to them is unstructured and that, whilst he is trying to provide positive feedback, it tends to be vague e.g. "good job". Mr Ross' change in approach is welcome but, as his positive feedback is not specific, it doesn't help his trainees to embed good practice. His trainees also provided some examples of written feedback from Mr Ross, which continues to be unclear, confusing and, at times, verbose. Mr Ross needs to ensure that he is using his knowledge of each case to give focused feedback with specific examples. He also needs to be careful to focus on one or two key areas for improvement and to avoid feedback that relates only to style (as opposed to a general point of principle).</p> <p>Mr Spector suggested that Mr Ross create a brief agenda for each meeting, covering work completed during the past week, actions for the following week, support required, and health and wellbeing.</p> <p>They went through the feedback that the trainees had received from Mr Ross during his most recent meetings with them. Mr Spector provided Mr Ross with guidance on how to improve in this area, highlighting where Mr Ross had given good developmental feedback and explaining how he could have altered his approach.</p>
30 September 2024	<p>Mr Ross has now attended a leadership and management development training course. Mr Spector has asked Mr Ross to share his reflections from the training with both him and Ms Paulsen, so that they can discuss them in their respective meetings.</p>

Approval		
Date	Signature of Line Manager	Signature of Employee
10 September 2024	H Spector	M Ross
26 September 2024	H Spector	M Ross
1 October 2024	H Spector	