



Capability Policy and Procedure

TABLE OF CONTENTS

Contents

		Page
1.	Introduction	1
2.	Standard of Performance	2
3.	Capability Process – Informal Stage	2
4.	Capability Process – Formal Stages	5
5.	Stage 3 – Capability Hearing	7
6.	Employees on a Probationary Period	7
7.	Payment of Increments	8
8.	Review Periods of Improvement	8
9.	Redeployment	9
10.	Action in Serious Cases	9
11.	Right to Appeal	9
12.	Equality Impact Assessment and Monitoring	10
13	Data Protection	10

Pandemic

In response to a pandemic all Council employees are expected to follow the social distancing and public health guidelines published by the Government and by the Council in order that the highest level of Health and Safety working practices are met.

Wherever possible, meetings should be held virtually either by video call or by telephone to avoid face to face contact. It is recognised that this is not possible or practical for every situation and therefore meetings should be held with only essential members present and social distancing and personal hygiene measures such as regular hand washing, use of hand sanitiser and surface cleaning at the front of mind.

Pandemic Risk Assessments must be followed at all times and any issues raised immediately with an appropriate line manager.

With regards to format of formal meetings, see adjustments set out in the main Disciplinary Policy in relation to pandemics.

1. Introduction.

- 1.1 Capability is defined for the purposes of this procedure as an individual employee's ability to perform the work expected of him/her to the required standards. This may be assessed by reference to skill, aptitude, health or any other physical or mental quality, but lack of relevant qualifications may also be factor in certain circumstances.

This procedure is designed to support staff and managers in dealing with problems regarding performance which may arise from time to time.

It aims to:

- ensure that any concerns about an employee's ability to achieve acceptable standards of work are addressed effectively through a clear and supportive procedure;
- ensure that supervision, training, counselling and support measures are deployed appropriately to help employees to achieve acceptable standards of work
- provide a clear procedure for the termination of employment in cases where it does not prove possible to secure a satisfactory and acceptable level of performance.

This procedure applies to all employees of the Council, other than the Chief Executive and Corporate Directors and Protected Officers.

1.2 Situations Outside this Procedure

Where poor performance is due to a failure to maintain adequate standards of behaviour or an employee's performance is **wilfully** inadequate, careless or negligent it should be dealt with under the Disciplinary Procedure as one of **conduct** rather than capability

Where an employee's performance is affected by ill-health, this should be dealt with under the Promoting Attendance and Managing Sickness Absence Procedure.

2. Standards of Performance

- 2.1 All employees must achieve an acceptable level of performance at work and will be supported and encouraged to reach that level. Managers should set realistic and achievable standards and ensure that employees understand what those standards imply in terms of the quality and quantity of work.

Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-ones, supervisions, appraisals. Any shortfalls in performance should be discussed promptly with the employee concerned and managers will need to establish whether an apparent problem is due to unreasonable expectations, a lack of skills / aptitude or insufficient supervision / training.

Where a performance issue is due to a disability, then support will be obtained via Human Resources and Occupational Health to identify whether any reasonable adjustments can be made. The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment and this impairment has a substantial and long term effect on their ability to carry out normal day-to-day activities. This could include, for example, problems with mobility, manual dexterity, physical co-ordination, ability to lift, carry or move everyday objects, speech, hearing or eyesight, memory or ability to learn and understand, ability to concentrate, or where a person's perception of risk or physical danger is impaired. This list is not exhaustive but provides a guide.

3. Capability Process – Informal Stage

- 3.1 Where there are concerns about an employee's performance, his/her manager will initiate an informal one to one discussion to bring the concerns to the attention of the employee.

During this informal stage, the manager will provide the necessary advice, coaching, guidance and support the individual in attaining the required standards.

It is expected that the majority of performance related issues will be resolved at this level and paying particular attention to detail at this stage will help achieve the best outcome.

3.2 **Preparation for the meeting:**

The first task is to identify that extent of the problem. To assist in this, the following questions should be addressed:

- What are the indications that an employee is not performing to the required standard?
- Is the employee aware of the standards and expectations of the job?
- Has the employee been given adequate induction and training?
- Have there been complaints about or criticisms of the employee's work from colleagues, suppliers, customers or members of the public?
- Are there factual grounds to indicate inadequate performance, such as poor results?
- Do the manager's own observations of the employee's work indicate dissatisfaction with their performance?
- Has the employee asked for help to overcome the problem?

- 3.3 The line manager will collate all the information necessary to demonstrate to the employee where they are not meeting the required standards of performance. Items such as job

description/person specification, competencies, supervision notes, appraisals, case files, screen prints of data systems etc. will assist with this.

The problems that lead to performance issues may include:

Insufficient training

Inadequate induction

Inability to cope with change

The effects of harassment

Relationship perceptions e.g. over-sensitivity

Lack of managerial guidance

Poor communication

Inadequate equipment to do the job

Alcohol/drugs

Illness/sickness/phobia (See Promoting Attendance and Managing Sickness Absence Policy and Procedure)

Loss of, or inability to gain, the necessary qualification to do the job.

3.4 **Conducting the Meeting:**

The line manager will inform the employee of the nature of the perceived problems and will set a date and time for a meeting to discuss how they should be addressed.

This stage does not require representation, however, if the employee wishes to be accompanied by a trade union representative or work colleague, this will normally be agreed.

The discussion should be helpful and constructive, with the aim of achieving full and effective performance in the job. All possible solutions should be explored, whilst remaining realistic about the situation and the support which can be offered.

The manager will present the evidence of the performance issue(s) to the employee and:

- explain in precise terms how he/she is failing to achieve the required targets;
- ask for an explanation and explore the reasons for the failure to reach satisfactory performance levels. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health;
- give thorough consideration to all the responses made by the employee.

3.5 If it is necessary to take further action under the Capability Procedure, the manager should:

- remind the employee that they are entitled to be accompanied by a trade union representative or work colleague;
- confirm with the employee that their work performance will continue to be monitored under the Informal Stage of the Capability Policy and Procedure;
- gain a commitment to improve;
- prepare a Performance Improvement Plan;
- agree clear, realistic targets to help him/her achieve the overall standard required;
- advise how they will assist the employee to meet the required standards, identify if appropriate what support, guidance, counselling and/or training should be provided;
- agree a reasonable period following which the situation will be reviewed.

The time period (as a general rule) will be between 1 and 3 months with at least two review meetings during that period. However, each case will need to be considered on its own merits and as such it may be that a shorter or longer monitoring period is required. (See section 8 below).

3.6 The manager should make detailed notes of all meetings, as they may be required at further stages of the process, these notes should include

- the areas of concern
- the standard expected and the target agreed
- any support to be provided
- the review period determined

The manager must also write to the individual to confirm the outcomes of the discussions.

3.7 Line managers must ensure that the employee's performance is closely monitored in accordance with the Performance Improvement Plan.

Review meetings should take place as agreed and progress should be documented in the 'Progress' column of the Performance Improvement Plan. Any targets that need amending should also be included on the Performance Improvement Plan. Furthermore, regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc.) but a written record should be kept.

3.8 At the end of the agreed monitoring period the manager will meet with the employee to discuss the progress and inform them of the outcome of the review period. The manager should then confirm the outcome to the employee in writing:

If no or insufficient improvement is achieved, the manager will first of all discuss the matter with human resources and the employee should be informed that the Formal Capability Procedure will be applied.

4. Capability Procedure – Formal Stages

4.1 **Formal Procedure Stage 1**

The Stage 1 – Formal Capability Meeting should be held with the line manager and a member of the human resources section.

The employee will be advised in writing of the requirement to attend a formal meeting to discuss the situation. Notice of at least five working days will normally be given. The notification will include:

- the date and time of the meeting;
- the place of the meeting;
- precise details of the areas in which the employee is failing to achieve the standard(s) required;
- confirmation that the meeting is being held under the Council's Capability Procedure (enclosing a copy), and the stage reached;
- a statement that the employee will be asked for an explanation and that possible solutions will be jointly explored;
- a statement of the employee's right to be accompanied by a trade union representative or work colleague.

4.2 **Conducting the meeting:**

The discussion should include the following:

- a review of the monitoring period and support given the shortfall in performance
- agreement (where practicable) of the Performance Improvement Plan and further targets
- any further training and support that is required and can be provided
- consideration of any extenuating circumstances that may be affecting the employee's performance
- consideration of withholding an increment until level of performance has reached the required standards
- establishment of a further monitoring period (between 1 and 3 months).
- timings for review meetings
- the employee should be forewarned that the level of performance is not acceptable and that failure to improve by the end of the review period may result in progressing to Stage 2 – Formal Capability Hearing of the procedure, which could lead to dismissal on the grounds of capability
- consideration of alternative employment. Where a suitable vacancy exists the normal recruitment and selection process will apply.

4.3 There should normally be a brief adjournment before the manager makes a decision about the next step. All possible solutions should be explored.

4.4 **Follow up action**

The outcome of the Stage 1 – Formal Capability Meeting will be confirmed in writing to the employee, this will include the next procedural steps, a new Performance Improvement Plan, details of the next review meeting etc.

The letter must also serve as a Formal Written Warning that failure to achieve the standard of performance required may lead to the second stage of the Formal Procedure and ultimately may put his/her employment at risk.

4.5 An accurate but concise record of the meeting should be kept, and the situation confirmed in writing to the employee, specifying:

- the precise aspect of his/her performance discussed as giving cause for concern;
- details of what was agreed, including the standard(s) required and performance targets set, any support and/or training to be given;
- the next procedural steps, monitoring arrangements and a review date;
- that a failure to achieve a satisfactory performance standard may result in the next stage of the Formal Procedure being invoked and may put the employees employment at risk.

4.6 The situation should continue to be monitored. Informal progress discussions with the immediate supervisor/manager are encouraged.

4.7 **Possible outcomes of the Review Period**

If the employee has now reached, or is shortly expected to reach, the specified levels of performance, no further formal action may be necessary. However, the decision will remain 'live' for 12 months and therefore if satisfactory improvement proves to be short lived then the manager has the option of returning immediately to this stage of the Formal Procedure.

If the employee has made substantial improvements, but his/her performance is still below acceptable standards. A further review period of between 1 to 3 months may be required.

If no, or insufficient improvement is achieved by the end of the review period the employee will be required to attend a further meeting under Stage 2 of the Formal Procedure.

Where there is a prolonged absence following the issuing of review periods or formal warning at any stage of this procedure then consideration will be given to extend such periods equal to the length of the absence.

4.8 **Formal Procedure Stage 2**

The Stage 2 – Formal Capability Meeting should be held with the Head of Service and a member of the Human Resources Section.

The purpose of this stage is to ensure that all options have been pursued and explored.

The procedure outlined in Formal Procedure Stage 1 should be followed and the employee's must be informed of his/her right to be accompanied by a trade union representative or work colleague.

4.8 The employee should be informed verbally and in writing that failure to achieve the required performance standard during the extended review period may result in the termination of their employment. The letter will therefore constitute a Final Written Warning and will remain 'live' for 12 months

4.9 **Possible outcomes of the Review Period**

If no, or insufficient improvement is achieved by the end of the review period, the employee should be required to attend a hearing under Stage 3 of the Formal Procedure.

4.10 **Formal Procedure Stage 3**

The Stage 3 – Formal Capability Hearing must be conducted by a manager at Corporate Director level or above. A member of the human resources section will also be in attendance at this stage.

5. Stage 3 - Capability Hearing

5.1 The employee must receive at least five working days' notice of the hearing, the arrangements for which should be confirmed in writing. The notification will include:

- the date and time of the interview;
- the place of the hearing;
- precise details of the areas in which the employee is failing to achieve the standard(s) required;
- all relevant evidence that will be discussed at the hearing;

- confirmation that the hearing is being held under the Council's Capability Procedure (enclosing a copy) and the stage reached;
- a statement that at the end of the hearing, a decision will be made about his/her future in the job and this may include a decision to terminate his/her employment;
- a statement of the employee's right to be accompanied by a recognised trade union representative or work colleague.

5.2 **Conducting the Hearing**

The line manager / Head of Service will present the management position, explain in precise terms how the employee is still failing to achieve a satisfactory standard, outline the process followed and to demonstrate what action, support, training, and discussions have taken place.

The employee/employee representative will be required to give an explanation as to why they have not met the required standards of performance.

Once all of the evidence has been provided and each party has had their say the hearing should be adjourned whilst a decision is reached.

The Corporate Director will consider all the points raised, ensure that all avenues for achieving a solution have been explored and that all reasonable training, support and counselling (if appropriate) has been given.

5.3 **Outcome of the Hearing**

The Corporate Director will arrive at a decision about the employee's future, this may be a decision to abandon the procedure, to dismiss the employee; or consider other options such as redeployment.

The outcome of the hearing will be conveyed as soon as possible. If it is not possible to confirm the outcome on the same day, the employee will be given an anticipated time scale for confirmation of the outcome and a subsequent meeting will be arranged to convey the decision.

An accurate but concise record of the meeting should be kept. This is the responsibility of the chair of the hearing.

5.4 Where the decision is dismissal Human Resources will write to the employee **within 5 working days** confirming the decision made and specifying;

- how he/she failed to achieve the standard of performance required;
- the decision reached;
- the effective date of termination of employment and arrangements for any notice period;
- the right of appeal against dismissal and how the right may be exercised.

5.5 Where the decision is other than dismissal Human Resources will write to the employee, advising him/her of the corrective course of action. Failure to accept the decision will lead to dismissal.

5.6 Detailed notes of all meetings will be retained by Human Resources.

6. Employees on a Probationary Period

6.1 All new entrants to the Council are employed on probationary periods. The probationary period will last for six months for all new appointments and will involve a continuous period of assessment underpinned by a clear framework for managing and supporting new employees.

Suitability and performance issues identified will be dealt with under the council's Probationary Policy and Procedure.

7. Payment of Increments

7.1 To pay an increment where an employee's capability is in question may send a conflicting message about the level of satisfaction with his/her performance and the seriousness of the situation.

The payment of an increment may therefore be withheld where the Informal or Formal Stage or beyond of the Capability Procedure has been invoked and is failing to bring about an improvement. Any decision to withhold an increment will be made by the Corporate Director in consultation with Human Resources.

Any increment withheld will be paid from the date the performance is deemed to be satisfactory.

8. Review Periods for Improvement

- 8.1 What is a 'reasonable' period for improvement? It is impossible to be specific and each case must be considered on its circumstances and, as far as possible, agreed with the employee. Consideration should be given to such factors as:
- length of employment;
 - the seriousness of the problem (what are the consequences of continuing mistakes)
 - the nature of the work (realistically, how long will it take to demonstrate an improvement?);
 - what support/training/counselling needs to be provided?
 - the employee's personal circumstances;
 - any other relevant issues not covered above.
- 8.2 Once a Review Period is determined, it should be adhered to. The employee may not demonstrate signs of improvement during this period, but this would not be regarded as sufficient reason to 'cut short' the period. It would be appropriate for the manager/supervisor to informally remind the employee of the requirements to meet the standard(s).

9. Redeployment

- 9.1 Redeployment will depend on suitable alternative work being available for the employee. There is no requirement for the Authority to create a post where none is available. Consideration should be given to whether he/she would be suitable for a post if a reasonable and realistic amount of training was provided.
- 9.2 A reasonable trial period should be agreed before any permanent redeployment. The situation should be closely monitored and the employee given as much support, guidance and training as possible. On completion of the trial period, if the arrangement is confirmed as permanent, no salary protection will apply, i.e. the employee will receive the rate of pay for the post irrespective of whether it is higher or lower than the rate for the original job. It is essential that it is made clear to the employee that acceptance of employment on a lower grade may affect pension benefits.
- 9.3 The terms of any trial period should be clearly explained both verbally and in writing and the potential consequences of dismissal if it is unsuccessful. The employee's substantive post must be kept available to maintain the contractual link between the employee and the job until the situation is resolved. Temporary cover of the substantive post will be permitted subject to the normal approvals.

10. Action in Serious Cases

- 10.1 In the rare event that the perceived incapability is considered serious enough to have a substantial adverse effect of the delivery of services, the Council reserves the right to suspend an employee on full pay whilst investigations take place. This would be a precautionary act and does not in itself constitute formal action.

Where an employee commits a single error and the actual or potential consequences of that error are extremely serious, such a case should be investigated and dealt with under the Disciplinary Procedure.

11. Right of Appeal

- 11.1 An employee who feels aggrieved at any stage of the Capability Procedure may pursue the matter through the Grievance Procedure.

Appeal against dismissal

The appeal against dismissal shall be heard by Employment and Appeals Panel
The employee should make any appeal in writing to the Head of Governance and Business Support, within **10** working days of receipt of the penalty. The employee must state the specific reasons for their appeal. An appeal hearing will be convened within **20** working days of receipt with all information relating to the appeal being available at least **5 working** days before the hearing is held. The decision of the Employment and Appeals Panel is final.

12. Equality Impact Assessment and Monitoring

The operation of this policy will be monitored for its impact on different equality groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required.

13. Data Protection

In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.