



Capability Procedure

Policies and Procedures Control Page

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CAPABILITY PROCEDURE

1. Introduction

The Councils Capability Procedure aims to positively assist those employees who do not currently possess the necessary skills or attributes to adequately perform their duties at work, to reach an acceptable standard of performance.

The Capability procedure provides a framework for dealing with cases where staff fail to achieve the performance standards expected of them.

The procedure provides managers with the mechanism to deal with those who under perform. It provides opportunities for improvement through a series of informal and formal stages which could result in redeployment or the dismissal of employees who fail to show adequate improvement.

The procedure applies to all employees of the Council with the exception of Strategic Directors and the Chief Executive.

2. Exclusions

The capability procedure does not apply in the following circumstances:

- Cases of gross negligence will be dealt with in accordance with the Council's Disciplinary Procedure.
- Staff under their probation will be subject to the Council's Probationary Period procedure.
- Cases of ill health which should be dealt with in accordance with the Councils Absence Management procedure.
- Cases where the lack of capability may be due solely or partly to disability or pregnancy, in which case advice should be sought from Human Resources.

3. Principles

- 3.1 Employees have a contractual responsibility to perform to a satisfactory level and should be given every help and encouragement to do so. Wherever possible, managers should seek to address any individual or minor performance problems as they occur. Prior to formal procedures where performance is below standard, an agreed action plan must be drawn up designed to achieve an acceptable standard, which may include training, mentoring and coaching as appropriate. This may be incorporated in the employee's appraisal or can be contained in a separate document. If following a review of the action plan the manager feels that the employee's performance is still below standard it will be appropriate to proceed with the formal stages of this procedure.
- 3.2 In most cases an employee should not be dismissed because of a failure to perform to the required standard unless at least one improvement warning and an opportunity to improve have been given. However, where an employee commits a single significant error, or a number of substantial errors due to negligence, and the actual or potential consequences of that error are, or could be extremely serious, warnings may not be appropriate and the issue will be

considered as gross misconduct and will subsequently be dealt with in accordance with the Council's Disciplinary procedure.

- 3.3 The timescales adopted for the various stages of this procedure will vary in accordance of the seriousness of the problem.
- 3.4 If an employee's unsatisfactory performance or its continuance is sufficiently serious, for example because it is likely to have a serious harmful effect on the Council, it may be appropriate to move directly to a final written improvement notice even though the employee may not have already received a first written improvement notice.
- 3.5 If a written improvement notice or final written improvement notice is issued and the employee's performance improves to a satisfactory standard they will no longer be monitored in accordance with the Council's Capability Procedure. However, if further unsatisfactory perform occurs whilst the improvement notice is still live (see 7.0 for time limits on warnings) this procedure will be re-invoked at the next stage.
- 3.6 As with other procedures, employees will be made aware of the right to recourse through the appeals procedure.

4. Responsibilities

4.1 Managers are responsible for:

- Ensuring that performance issues are addressed promptly and fairly.
- Explaining clearly the shortfall between the employee's performance and the required standards.
- Providing regular feedback on work performance.
- Establishing the cause of the poor performance and any action which can be taken to help improve the situation.
- Making reasonable adjustments in cases where the employee is not performing their duties satisfactorily due to health reasons.
- Identifying any support services which might be required (e.g. the identification of a mentor, training or coaching, referral to Occupational health or BUPA EAP).
- Ensuring that reasonable time limits and clear and measurable targets are agreed with employees to achieve the desired standard of performance. During these time periods, performance must be closely monitored and employees advised of any shortcomings and the degree to which performance must be improved. This may include reviewing the amount of supervision needed.
- Maintaining personal notes of difficulties encountered, assistance given and any actions taken.
- Setting a date for a review meeting.

4.2 Employee's are responsible for:

- Ensuring that they are aware of their responsibilities in their role.
- Performing their duties to a satisfactory level.
- Engaging in any training and development that will enable them to reach the required standard.
- Responding to corrective measures that are identified.
- Familiarising themselves with Council policies and procedures.
- Informing their manager of any issues which could be affecting their work.

5. Procedural stages

5.1 Stage 1: First formal meeting

If following informal assistance the employee's performance hasn't satisfactorily improved they will be asked to attend a formal capability meeting. The employee will be offered the right to be accompanied and should be given 5 working days notice of the meeting and its purpose in writing. During the meeting the performance against the previous action plan will be discussed. Any additional capability issues must also be fully discussed and considered. The manager and employee should agree an action plan if appropriate based on SMART objectives (Specific, Measureable, Achievable, Realistic, Time bound). After the meeting, the manager should give the employee a written action plan with clear targets and timescales for demonstrable improvement.

The manager will monitor and assess the employee's performance for an appropriate period of time normally ranging from 4 to 12 weeks.

5.11 Stage 1 review meeting

At the end of the monitoring period, the manager, service manager (or the managers manager) and a HR representative will meet with the employee to review progress. The manager will give a clear indication of the outcomes of the monitoring process, and identify any progress made and any further improvements needed. The employee must be allowed to respond to the outcomes of the monitoring process and have the opportunity to ask questions.

The service manager (or the manager's manager) must decide based on the discussions and progress what action is appropriate. Available options include:

- No further action under the capability procedure as the employees performance has improved sufficiently **or**
- Issue a **written improvement notice** and progress to stage 2 of the capability procedure if no significant improvement is evident.

The service manager must write to the employee informing them of the decision. In cases where a written improvement notice is issued the employee will be informed of their right of appeal. The letter should also warn the employee that they could progress to a final written improvement notice if the required improvement is not achieved.

5.2 Stage 2: Second formal meeting.

Where the service manager (or the manager's manager) decides to progress to stage 2, the letter confirming the outcome of the stage 1 monitoring process will outline those areas where performance remains unsatisfactory.

At the meeting the manager will discuss fully the capability issues, give the employee the opportunity to respond to the issues raised and discuss, and agree a plan of action, targets and timescale for improvement.

After the meeting, the manager should give the employee a written action plan with clear targets and timescales for demonstrable improvement.

5.21 Stage 2 review meeting

At the end of the monitoring period (usually between 4 and 12 weeks) a further meeting will be held with the employee to review progress and confirm the outcomes of the monitoring process. The service manager and a HR representative will also be present. If the employee's manager is also the service manager there will be no need to substitute for another person.

The service manager or (the manager's manager) must decide based on the discussions and progress what action is appropriate. Available options include:

- No further action under the capability procedure as the employees performance has improved sufficiently **or**
- A **final written improvement notice** and revised action plan is issued and progress to stage 3 of the capability procedure if no significant improvement is evident.

The service manager must write to the employee informing them of the decision. In cases where a written improvement notice is issued the employee will be informed of their right of appeal. The letter should also warn the employee that their employment could be terminated if the required improvement is not achieved.

5.3 Stage 3 Formal meeting to review the employee's performance following the issue of a final written improvement notice.

At the end of the monitoring period (usually between 4 and 12 weeks) a further meeting will be held to review progress and confirm the outcomes of the monitoring process. The manager will present their findings and the employee will be allowed to state their case. The service manager will be present (accompanied by a HR representative) who will listen to both parties.

The service manager must then decide based on the discussions and progress what action is appropriate. Available options include:

- No further action under the capability procedure as the employees performance has improved sufficiently **or**
- Recommend a **formal hearing** takes place if no significant improvement is evident.

The service manager must write to the employee informing them of the decision.

5.4 Stage 4 Hearing

Where an employee has failed to reach the required standards of performance, conduct or attendance required for their position, they should be invited to a formal hearing in order to reach a decision about their employment status. Upon receipt of the letter informing them of the decision to proceed to stage 4 of the Capability procedure the employee must be given a minimum of 10 working days notice of the date for the hearing.

The employee should be invited in writing to attend the meeting, allowing 10 working days notice. The letter should state the reasons why they have fallen short of the required standards and should advise them that a possible outcome of the meeting could be dismissal.

The employee will have a right to be accompanied at the meeting by a colleague, trade union representative or any other person of their choice.

The hearing will be chaired by a Designated Officer who will be assisted by a HR representative.

6.0 Order of Proceedings

1. Opening

The designated officer should begin by explaining how the hearing will be carried out.

2. The complaint

At the hearing the manager will explain the capability issues and the outcomes of the monitoring process.

3. Employees right to reply

The employee will be allowed to explain their continued failure to achieve and maintain the required level of performance. The employee should also be given a reasonable opportunity to ask questions and seek clarification.

4. Summing up

After questioning is completed the designated officer will summarise the main points of the discussion and will ask the employee if they have anything further to say.

5. Adjournment

The designated officer will then adjourn the hearing before a decision is taken about whether a sanction is appropriate. This allows time for reflection and proper consideration.

6. More matters come to light

If new matters come to light in the course of a hearing, not being matters which could have been previously raised by the employee, the hearing shall be adjourned to investigate the new facts and the hearing will be reconvened when this has been done.

7. Penalty/sanction

If it is decided that, on the balance of probability, the employee's performance is unlikely to reach an acceptable standard, the appropriate penalty will be considered. At the end of the hearing the designated officer should inform the employee of the outcome of the meeting. The outcome of the meeting should then be confirmed in writing to the employee.

The outcome could include any of the following:

- Dismissal with notice
- Transfer to a similar post elsewhere or
- Demotion to another post, paid on a lower scale
- An extension on the stage 3 process

Redeployment will be considered in accordance with the Council's Redeployment procedure.

7.0 Time limits on warnings

Copies of written improvement notices will be contained on an employee's personal file and will be removed after the following periods:

First written improvement notice	12 months
Final written improvement notice	24 months

8.0 Appeals

8.1 Appeals against stages 1 and 2.

Employees may appeal against the outcome of stages 1 and 2 by submitting a letter detailing the reason for the appeal. Information relating to who the appeal should be addressed to and timescales will be contained within the letter which is sent to the employee to advise them of the outcome following the review. If the outcome of stage 3 is that the manager recommends a formal hearing takes place

the situation will be independently reviewed during the hearing process and therefore employees will not be able to appeal at this stage. However, the employee will be able to appeal against any decision or sanction made at the hearing.

8.2 Appeals against dismissal

Appeals against dismissal shall be considered by members of the Employment Committee in accordance with the Council's Employment Appeals procedure.

The Employment Appeal Panel shall comprise of 3 Councillors. All panel members shall be trained in hearing employment appeals. No panel members shall sit on an appeal where they have had previous involvement in the case subject to that appeal.

The hearing will be heard no later than 30 working days after notice of appeal is lodged unless both parties agree otherwise.

8.21 Before the hearing for appeals against dismissal

1. The Monitoring Officer shall notify the employee in writing at least 10 working days in advance of the time, date and place of the hearing
2. Either party may be represented if they wish
3. The Designated Officer shall send the employee and the Monitoring Officer, at least 5 working days before the hearing, a note of the disciplinary hearing, copies of any documents which he/she intends to refer, the names of any witnesses to be called and the name of any representative
4. The employee shall send the Designated Officer and the Monitoring Officer at least 5 working days before the hearing, a statement in writing setting out any essential findings of facts with which they are dissatisfied, any documents to which they intend to refer, the names of any witnesses to be called and the name of any representative.
5. The Monitoring Officer shall send the members of the Employment Appeal Panel copies of all documents supplied at least 3 working days prior to the hearing.

8.22 At the Appeal hearing

1. The Designated Officer shall put his/her case and may call witnesses, who may be questioned by the employee and the Employment Appeal Panel.
2. The employee shall put their case and may call witnesses, who may be questioned by the Designated Officer and the Employment Appeal Panel.
3. The Designated Officer and then the employee may sum up.
4. The parties shall withdraw while the Employment Appeal Panel, with the Monitoring Officer or his representative present, comes to a decision
5. The Employee Appeal panel may uphold the Designated Officer's decision at the appeal or make any other decision (including exonerating or reinstating the employee or issuing a warning) *
6. When a decision has been reached, the parties shall be recalled and informed of the decision and the reason for it.

Reinstatement of an employee shall negate the previous decision to dismiss and the employee shall be entitled to payment of salary for the period of the original "dismissal."

9.0 After the hearing

The proceedings shall be confidential and only the operative decision shall be published or made public in any way. Any decision shall be confirmed in writing, and any confirmation of dismissal shall inform the employee of any rights they may have to complain to an Employment Tribunal of unfair dismissal.

Appendix A

Example of a SMART action plan

Name:

Period: To:

Specific Objective	Measures	Agreed as being achievable	Is it realistic and relevant	Timings/ deadline
<p>Specific means that the objective is concrete, detailed, focused and well defined. Specific also means that its results and action orientated.</p> <p>Specific objectives are best written using action words such as conduct, develop, build, plan, execute etc.</p> <p>Is it clear what needs to happen?</p> <p>Is the outcome clear?</p> <p>Will this objective lead to the desired results?</p>	<p>Establish criteria for measuring progress toward the attainment of each objective you set.</p> <p>How will I know when it will be accomplished?</p> <p>Is there a reliable system in place to measure progress?</p> <p>If results aren't easily quantifiable, try a system that scores employees between 1 and 5 for their level of competence in certain areas e.g. team working, initiative, flexibility, leadership skills.</p>	<p>Are the objectives you set agreed by both parties as being capable of being reached?</p> <p>With a reasonable amount of effort can the objective be achieved?</p>	<p>Will the objective lead to the desired result?</p> <p>Do you truly believe the objective can be accomplished?</p> <p>Is the objective being or has it been accomplished in the past by colleagues?</p>	<p>Time bound means setting deadlines for the achievement of the objective.</p> <p>Deadlines need to be achievable and realistic.</p> <p>Will other competing demands cause delay?</p> <p>When do you want to achieve the set objectives?</p>

<p>Example: To plan your time better to ensure your punctuality reaches a satisfactory level so that you arrive on time for work every morning. Your punctuality needs to improve by 20 percent for this to be achieved.</p>	<p>Your progress in reaching this objective will be measured by your supervisor who will assess your progress against the time recorded in the daily signing in book.</p>	<p>Agreed by Manager Agreed by Employee</p>	<p>This objective is realistic; we know this because other team members are able to arrive on time for work. Following our discussions we have established that there are no personal circumstances which prevent you from attending work at the specified time.</p>	<p>Your punctuality will be monitored over a 4 week period.</p>
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APPENDIX B – Formal Meeting

Dear

Invitation to attend a formal Capability meeting

I write to confirm that you are required to attend for a formal capability meeting* on * at *.

**At this meeting you need to be aware that disciplinary action against you, in accordance with the Council's capability procedure, will be considered.

The names of the officers attending the meeting are:

**The purpose of this meeting is to investigate the following areas of concern:

a)....

I attach a copy of the Council's Capability at Work Procedure.

You are entitled, if you wish, to be accompanied by your Union representative or any other person of your choice.

Please confirm your attendance accordingly.

Yours sincerely

Appropriate Manager

** Whichever is appropriate

Appendix C

Dear

Stage 1 – First Written Improvement Notice

I am writing to confirm the outcome of your 1st formal capability review meeting held on (DATE) at ____ at which your unsatisfactory performance was discussed and reviewed.

Over the last (insert timescale) your performance has failed to improve to an acceptable level. Your performance falls below a satisfactory standard in the below areas:

(Please list)

The improvement that is required is:

(Please list)

The timescale for achieving this improvement is (insert time scale). Your performance will next be reviewed on (insert date).

As a result of this failure to satisfactorily improve, I can confirm that you are being issued with a formal written Notice of Improvement in accordance with the Capability Procedure. The written improvement notice will be placed on your personal file and remain live for 12 months. This improvement notice represents the first stage of the formal procedure and is equivalent to a first written warning. Failure to improve could lead to a final written warning and ultimately, dismissal.

I trust that you will make efforts to improve your performance. However, if you have any problems which make it difficult for you, which I am not already aware of; I would urge you to discuss these immediately with me so that we can find a satisfactory solution.

You have the right of appeal against this decision (in writing) to..... within 5 working days of receiving this improvement notice. Your written notice of appeal should set out the grounds for your appeal.

I attach a copy of your action plan. If you have any queries with the content of this letter, please contact me.

Yours sincerely

Manager