

Appendix B Revised Capability Procedure

INTRODUCTION

The aim of the Capability Procedure is to support employees into fully performing their duties and to address issues of under-performance on a formal basis. It is designed to deal with those cases where, despite normal management support, the employee remains lacking in some areas of ability, skills, competence or knowledge and is subsequently unable to carry out the required duties to an acceptable standard.

We believe that most employees are competent, effective and are able to develop through the range of opportunities offered by the Council. There are, however, occasions when a significant gap may develop between the requirements of a job and an employee's performance and if left unchecked, the situation may threaten the success of the organisation and individual.

APPLICATION AND SCOPE

This procedure applies to all Council employees with the exception of:

- Employees who are still in their probationary period, when the Probation Guidance should be followed;

Where an employee has accepted redeployment to a post as a result of a reorganisation and the duties or requirements of the new post is significantly different from his previous post. Advice should be sought from HR.

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CAPABILITY PROCEDURE AND THE DISCIPLINARY PROCEDURE

The Capability Procedure is applied in situations concerning a genuine lack of capability and when an employee consistently fails to meet the standards required. However, if the employee is fully capable, but unwilling to carry out their job properly this should be dealt with as misconduct under the Disciplinary Procedure. If at any stage a manager has reason to believe that any aspect of the under-performance relates to issues of conduct, the manager shall invoke the Disciplinary Procedure.

CAPABILITY PROCEDURE AND THE SICKNESS ABSENCE POLICY

The Sickness Absence Policy deals with the effects of absence in the workplace. The Capability Procedure concentrates on performance and the reasons for under-achievement that may include disability and ill health.

DIABILITY, ILL HEALTH AND UNDER-PERFORMANCE

If a manager considers that an individual's under-performance may be related to a disability, health condition or industrial injury than it must first be investigated to verify and address the circumstances. This will normally include referral to the Council's medical advisors to seek medical advice.

It is important to consider whether the employee's condition is covered under the Disability Discrimination Act 1995 (DDA). Advice should be sought from Council's medical advisors and HR. Reasonable adjustments will always be considered to enable the employee to continue to perform in their job.

PRINCIPLES OF THE PROCEDURE

- This procedure should be used as guidance for all managers when dealing with issues of under-performance.
- The procedure aims to provide additional support to that which normally flows from probation, the appraisal process and day to day normal management support.
- Any employee has the right to be represented by a work colleague or Trade Union Representative at any formal stage of the procedure. However, the Representative may not answer questions on behalf of the employee.
- At all stages of the procedure, the Council would consider how appropriate training would benefit the employee and whether the possibility that alternative employment within the organisation might be in the interests of both parties.
- Confidential and professional advice is available from a member of the HR team to help managers and employees when using the procedure.
- If an employee feels that they are being treated unfairly with regard to the application of the procedure or the manner in which a meeting has been conducted, they have the right of appeal using the Grievance procedure.
- The spirit and intention of this procedure is to provide a positive, structured approach to resolving problems of under-performance. It aims to help the individual who may have problems and offers them various forms of support whilst recognising the need to maintain and improve Council services.
- It is preferable that a member of the HR team is involved in the consideration of an employee's work performance prior to any formal interview being arranged to ensure consistency across the Council when dealing with the issue of capability.

UNDER-PERFORMANCE

When a manager identifies that the work performance of a member of staff is unsatisfactory, this should be brought to the employee's attention in as constructive a manner as possible. The guidance is based on the understanding that an employee must be capable of performing the job for which they are employed to a satisfactory standard. Where despite being given help as dictated by the following procedure, they are still unable to perform their job adequately, they should be helped to find alternative work or be dismissed.

Informal Counselling

- The manager should meet the employee informally to discuss specific information about the employee's unsatisfactory work performance. The purpose of the meeting is to attempt to identify solutions to the problem. The manager should ensure that the employee is clear about what is expected of them and should agree realistic targets for improvement.
- It is important that the employee is given every reasonable support to enable the duties of the post to be fulfilled. This may include regular meetings with the line manager as well as extra training on and off the job to enable them to improve on their unsatisfactory work performance. The employee should have the opportunity to express their reaction to the criticisms of their work performance. The manager must advise the employee that their performance will be monitored over an agreed period and if there is no improvement the process will have to become formal.

- The performance of the employee should then be monitored and assessed as objectively as possible over an appropriate period of time, bearing in mind particularly the nature of the duties and the length of time considered reasonable for an improvement to take place.
- If the employee's performance improves to an acceptable standard in the review period the employee should be invited to a further meeting at the end of the monitoring period and advised that their work has reached an acceptable standard and that the procedure will be ended.
- Notes of the meetings should be maintained on the employee's personal file, as should notes on the monitoring process to ensure that details of events could be accurately related to at future meetings.

Formal Procedure

Carry out investigation

A full investigation should be carried out and a report prepared, providing an appraisal of the employee's performance. Sufficient information may be available from the informal process or if a disciplinary investigation has shown capability rather than conduct issues.

First Formal Meeting

- If after the investigation the investigating officer decides that it is a situation of under-performance by the employee, then the employee should be invited, in writing, to a first formal meeting. The letter should set out the issues to be discussed and should inform the employee that they have the right to be represented by a work colleague or Trade Union Representative.
- The employee should be informed of the ways in which their performance is not meeting the required standard and the opportunity will be given for them to put forward any explanation during this meeting. It is preferable that a member of the HR team is present to provide advice and consistency in approach across the Council.
- At the interview, the member of staff should be reminded of the earlier informal discussion and of the steps to encourage improvement. They should be told as precisely as possible of the details about their under performance.
- As with the informal counselling, additional training and support should be offered, if considered appropriate.
- If the manager does not accept the explanation given by the employee, the problems created by the employee's poor work performance should be identified (e.g. the effect on the service provided, the effect on the employee's colleagues).
- The employee must be informed that an improvement will be required by a specified date in the future. This review date should be set for a reasonable time in the future to give the employee the opportunity to achieve and sustain an improved performance. Dependent on the level of improvement required a maximum of a three-month period is recommended, however it may be necessary to have a shorter review period.
- The manager must confirm details of the discussion in writing confirming the employee's right to raise a grievance.

- It is important to continue to closely monitor and objectively assess the employee's performance following the formal interview, providing positive feedback wherever possible.
- Given that a review period is recommended before the second formal meeting, informal meetings should be set up at regular intervals throughout the review period to ensure effective monitoring and that support is maintained. Notes should be kept of these meetings to provide a progress report, or otherwise, of the individual's work within the process. These will usually be held on a weekly basis.
- If the employee's performance improves to an acceptable standard in the review period the employee should be invited to a formal meeting at the end of the monitoring period and advised that their work has reached an acceptable standard and that the procedure will be ended.
- It may be appropriate depending on the circumstances to explain to the employee that should the improved performance not be sustained or under performance occurs again within a 12 month period then the formal Capability Procedure will be invoked at the second formal meeting stage. The issue of capability or conduct will also need to be considered again.

Second formal meeting:

- If there is failure to improve during the review period the manager will need to interview the employee formally again. The right to be represented must be given and it is preferable that a member of the HR team is present to provide advice and to ensure consistency in approach across the Council. The same points as identified at the first formal meeting should be examined in detail.
- The options available to management at this second formal meeting are:;
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 - further monitoring.
 - redeployment to an alternative role if available,;
 - termination of employment,

Further monitoring

Further monitoring should be considered where significant improvement has been made but the performance is still not at the required standard. Further support and training should be offered if appropriate. A further review period should be set and progress continue to be closely monitored.

Redeployment

The possibility of offering alternative employment should be considered before termination of employment is recommended. The decision regarding whether or not to offer alternative employment either on a permanent or trial basis will depend on various factors including:

- availability of suitable employment
- the reasons for the under performance
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The employee should be asked to complete a redeployment form.

- Redeployment does not necessarily have to be equivalent employment, particularly in the case of an unsatisfactory promoted employee who could be offered a post at their previous level. The Council will make attempts via the redeployment process to find alternative employment, although no guarantee should be given. Employees have no right to protection of current terms and conditions if the new post is graded at a lower grade.
- If an offer of alternative employment is made, this must be confirmed in writing explaining why it is being made and the possible consequences of the employee refusing it. The employee should be given sufficient time to consider the offer.
- If an offer of alternative employment is made, the employee's performance will continue to be monitored for a specified time, to ensure satisfactory performance in the new post. A clear time limit must be specified for this, which will depend on the particular circumstances. In addition to the standard information in the letter confirming the second formal meeting, details of jobs offered would need to be made and the employee must be informed that their contract of employment may be terminated if the unsatisfactory work performance does not improve.
- The manager in exceptional circumstances may agree a further monitoring period. Extensions to the monitoring period should be no more than one month intervals. It must be made clear that failure to improve their work performance within the review period may result in the termination of their contract.
- If an offer of alternative employment is made, but rejected by the employee and a further monitoring period is agreed upon, it must be made clear that the rejection of the offer will be taken into account at the end of the further review period.

Recommendation to terminate employment

- If the situation remains unsatisfactory at the end of the review period, or redeployment has not been possible, failed or been rejected or termination of employment has been recommended at the second formal meeting a Case Review meeting will be held.

Case Review meeting

The purpose of the Case Review meeting will be to consider whether, in line with legal options, there are any further actions that the Council and employee can take to assist the employee in continuing their employment or whether the employment should be terminated due to the employee's incapability to perform their duties to the desired standard.

The appropriate Corporate Manager, accompanied by a member of the HR team not previously involved with the case will chair the meeting. In the case of a Corporate Manager the meeting will be chaired by the Executive Director.

The employee will be given at least 5 working days notice of the intention to hold a Case Review meeting. A trade union representative or work colleague may accompany the employee.

Case review meetings are not disciplinary hearings but many of the provisions made for disciplinary hearings will be good practice for case review meetings. In particular it is very important to allow the employee and/ or their representative to question what is said and to present their own submission.

Management, usually the relevant line manager, with a second member of the HR team will set out the history of the case.

The Corporate Manager will consider such issues as:

- The need for the work to be undertaken;
- The desired standards of performance;
- The reasons for the under performance;
- What actions have been taken by the Council and employee to achieve the desired standards;
- Medical advice received, if appropriate.

This list is not exhaustive and the weight attached to each will depend on the circumstances of the case.

Any actions will be discussed with the employee and their representative, if applicable, before any final decisions are made. In all instances employees will be treated in a fair and reasonable manner, appropriate to their particular case.

The employee will be informed of the decision and the decision will be confirmed in writing in 5 working days.

If the Corporate Manager feels that further action could be taken , the manager with assistance from HR is responsible for putting that action into place.

If the Corporate Manager considers that dismissal on the grounds of capability is the appropriate action they will make a recommendation to the Chief Executive. If the dismissal is confirmed the dismissal will inform the employee of the notice of termination of employment and the date it will take effect. Employees will usually be paid in lieu of notice.

The employee has the right of appeal against decisions to terminate employment on the grounds of capability. In order to exercise this right, the employee must write to the HR Manager within 10 working days of receipt of the letter confirming dismissal. The employee must state the grounds for their appeal.

A panel of the Employment Committee will hear the appeal. A trade union representative or work colleague may accompany the employee at the hearing.

The decision of the panel is final within the authority's internal procedures.