

Human Resources

Capability Procedure



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I. Introduction

- 1.1 The effective performance of all staff is critical to the Council's ability to provide quality services to our community. Consequently through the Council's recruitment, induction, probation and internal support procedures every effort is made to ensure that staff have the appropriate skills and abilities to conduct the roles that they are appointed to fulfill.
- 1.2 There are occasions when staff are unable to achieve the performance standards expected of them and the Council recognise that it is in the best interests of the individual and organisation to ensure that such matters are identified and addressed.
- 1.2 This procedure aims to assist Managers and employees in addressing performance matters, by providing a structured process through which, it is hoped that the necessary improvements can be made to the accuracy, quality and quantity of an individual's work. It also seeks to provide a fair means of handling cases where, despite appropriate support and assistance, employees are unable to meet the required performance standards.
- 1.3 Nothing in this procedure shall prevent Managers from addressing under performance as part of the normal management process.

2. Preventing capability problems

- 2.1 The emphasis for Managers should be on managing performance rather than performance problems.
- 2.2 There are a number of steps which Managers can take to help prevent capability problems arising. These are:

2.2.1 Conducting a thorough recruitment and selection process

In attending the Council's recruitment training and following the Council's recruitment procedure, Managers can help to minimize the risk of performance problems by appointing the right person with the right skills. This will be dependant on the proper review and preparation of an accurate job description and person specification. Guidance on the Council's recruitment procedure can be found on the intranet site.

2.2.2 Spending time on the induction process for staff

Induction is crucial to ensuring that a member of staff is fully familiar with the organisation, their role and responsibilities. Managers must ensure that this is properly prepared and considered prior to the employees start date to assist the employee in reaching the required performance level. This is especially important where existing members of staff are transferring to new roles – where induction is often overlooked.

2.2.3 Making effective use of the Council's probationary review and internal support period.

The purpose of the probationary and internal support period is for employees to demonstrate their suitability for their post. If concerns arise during the probationary or internal support period Managers should ensure that these are voiced and addressed as part of the review process. Managers have the ability to extend probationary or internal support periods where they feel the employee needs further time to reach the required performance level. Further guidance can be obtained from the appropriate HR Business Partner.

2.2.4 Effective use of the Council's Staff Progress Review system

As part of the wider performance management framework all Managers should conduct yearly appraisals with their staff. These should be reviewed regularly and at least every 6 months to address any changes to priorities and objectives. As part of the Council's staff progress review process Managers and employees have the opportunity to update job descriptions. This is a useful tool in ensuring that employees are clear about their responsibilities and duties and means that these are accurately reflected.

2.2.5 Regular supervision and appraisal

In order to achieve the Council's objectives Managers need to be fully familiar with individual and team workloads and any performance matters, be that as a result of an individual's capability or other external factors. Consequently, it is essential that Managers engage with their staff on a regular basis to conduct appraisals of their workload and progress. This will help Managers to address any potential performance matters before they present real problems for the Council. It will also assist Managers in identify training or development requirements.

2.2.6 Regular team briefings

In order to perform to the required standard individuals and teams need to be clear of what is expected of them. Managers, therefore need to ensure that they communicate effectively with their teams to provide clear instructions and information concerning current and future workloads and demands.

2.3 All of the above are examples of good management practice. Managers should keep records of the above as and when they occur as these may need to be referred to if an employee fails to meet the standards of their job.

3.0 Responsibilities of Managers and Employees

3.1 Managers and employees must take joint responsibility for the prevention and management of under performance. Left unattended poor work performance is likely to:

- Have an adverse effect on the quality of service provision
- Reduce accuracy, efficiency and productivity
- Lower employee morale
- Encourage employees to look for other employment
- Prevent the Council from achieving its objectives

3.2 Consequently every Manager has a responsibility to:

- Ensure that every employee receives adequate induction and training
- Set and communicate standards of work
- Properly manage work performance by:
 - a. Providing feedback on work performance
 - b. Conducting Appraisals
 - c. Providing appropriate support and assistance to help staff reach the required standards
- Handle any problems that arise in a sympathetic and constructive manner

3.3 Employees are responsible for ensuring that they:

- Are aware of their duties and responsibilities of their role
- Perform their duties to the required level
- Engage in any reasonable training and development activities which will enable them to reach and maintain required performance standards
- Inform their manager of any issues which could be affecting their work performance (i.e. ill health, personal/family matters, lack of skill or experience)
- Respond constructively to any measures identified to improve their performance

3.4 Values Framework

3.41 The Council have adopted certain values which are at the core of how staff and the organisation are expected to behave. These are key to delivering our vision and strategic aims and are the qualities that we expect from all employees.

3.42 All employees have a responsibility for ensuring that they are aware of the Values and Behaviours and that they actively support and exhibit these.

4.0 Taking the right approach

4.1 Poor work performance occurs when an employee fails to perform their duties to an acceptable standard on a consistent basis. In most instances the reasons for this fall broadly into three categories:

1. Misconduct due to negligence, carelessness, or other willful acts on the part of the employee i.e.
 - (a) The employee refuses to follow procedures or instructions
 - (b) Is guilty of poor time keeping or unauthorised absenteeism
 - (c) Does not work in accordance with health and safety procedures
 2. Lack of capability due to ill health
 3. Lack of capability which amounts to limited competence assessed by reference to their skills, qualifications and aptitude.
- 4.2 To determine the best management approach it is first important to determine the reasons for the poor performance and the category that this falls within. For example, performance matters linked to misconduct should be addressed through the Council's disciplinary procedure; whereas, lack of capability as a result of ill-health, should be managed through the Sickness Management and Ill-health capability procedures.
- 4.3 This procedure aims to deal with number 3 i.e. the employee is willing but unable to do the work. This is where the employee is unable to reach the required standards although they are not doing anything deliberately wrong.

Examples may include where an employee:

- Does not have the capacity or the ability to do the job
 - Appears to be unable to understand or follow clear managerial directions
 - Works in a way that disrupts the work of colleagues
 - Carries out duties in a way which is inconsistent with the Council's values or standards
 - Fails to deliver work in accordance with agreed realistic timescales
 - Fails to meet the requirements of the service in terms of output and/or quality
 - Demonstrates behaviour which adversely affects the employee's own work performance
- 4.4 There may be some occasions when it is difficult to distinguish between misconduct and capability – for example when an employee is reluctant to adapt to change, is inflexible or fails to work to agreed timescales. In such circumstances, Managers will need to consult with their HR Business Partners and make an informed judgement about the best way to handle such matters.

4.5 Other Exclusions

There are other occasions when the capability procedure will not apply.

- Where an employee is within their probationary period, any performance matters should be handled within the probationary review procedure.
- Where an employee is under a trial period (i.e. following re-deployment as a result of re-organisation or due to ill-health), when the terms and conditions of the trial will apply.

5. Managing poor performance

5.1 Evidence of poor performance

5.1.1 Where a Managers feels that they need to address concerns surrounding an employee's performance it is firstly important to obtain tangible evidence of these. This evidence should be that which can be adequately explained and illustrated to the employee. Examples are:

- Factual information or data: i.e.
 - the employee does not meet set deadlines
 - the employee's processing rate is significantly less then colleagues
 - the employee's work is inaccurate
- Substantiated complaints or criticisms about the employee's work performance from customers, colleagues, supervisors or external partners.
- Management observations

5.1.2 Managers must ensure that any evidence related to concerns about an employee's performance is substantiated. This is to avoid the potential for and accusations of bias.

5.2 First Meeting

5.2.1 Formal action is not always required to improve an employee's performance. The first step therefore is for the Manager to meet with the employee to discuss any concerns that they have surrounding their performance.

5.2.2 As genuine incapability is not misconduct, the employee should be treated sympathetically and confidentiality should be maintained. The prime objective throughout this process is to encourage and support the employee to improve so that they can reach the required performance standard.

5.2.3 The meeting can be effective at resolving poor performance at an early stage as it provides an opportunity for open discussion of the issues and allows both parties to explore possible reasons and solutions.

5.2.4 Purpose and content of the meeting

The purpose of the meeting is to:-

- Indicate to the employee's that there are concerns regarding their performance.
- allow discussion of the employee's performance and explanations for them not reaching or performing to the required standards.
- to determine if there may be any personal or work related factors which have contributed to their poor performance;
- to explain what the Manager's expectations are with regards to work performance

- allow discussion of potential solutions or actions

The Manager may find it useful to refer to the following documents as part of their discussion with the employee:

- the employee's job description
- the employee's appraisal documentation
- Values Framework

5.2.5 Possible outcomes from the meeting are (but are not exhaustive to):

- Note the discussion and no further action.
- To agree an action plan for performance improvement, outlining agreed outcomes and timescales.
- To work with the employee to address work-related issues

Where an employee discloses domestic or personal difficulties such as caring responsibilities or personal problems, the Manager will discuss the problem with the employee and consider ways to overcome it. For example, this may include permanent or temporary adjustment of hours, changes to duties or workload. Solutions will be dependant on operational demands and circumstances. The Manager should advise the employee of the Council's employee assistance programme, where appropriate.

If a Manager is unsure of how to handle an issue, they should contact their HR Business Partner for advice.

5.2.6 The Manager will write to the employee to confirm the outcome of the meeting, detailing: -

- a. The original concerns regarding the employee's performance
- b. The agreed course of action, including,
 - i. The improvements that are expected
 - ii. Details of any review period and how this will be monitored

5.2.7 If the employee in question has a disability, as defined under the Equality Act, the Manager must give due regard to any problems which may have developed as a result of this. For example it could be the case that whilst the duties of the job have not changed the effects of the person's disability may have intensified, resulting in a fall in performance. In order for performance to be improved it may be necessary to consider introducing reasonable adjustments in terms of equipment, work allocation, workplace environment and the provisions of extra support.

5.2.8 Managers must make sure that they maintain objectivity, and do not discriminate against an employee as a result of their disability.

5.3 Monitoring and Review

5.3.1 Following the meeting the Manager will need to make the necessary arrangements to monitor the employee's work performance and progress.

- 5.3.2 If the employee's performance reaches the required standard then no further action is required and the Manager will write to the employee to confirm that the review period has ended.
- 5.3.3 If the employee's performance does not improve then the Manager should consult with their HR Business Partner with a view to arranging a formal meeting with the employee
- 5.3.4 This stage can also be invoked in genuinely exceptional circumstances where the Manager believes a more serious lack of capability exists (i.e. serious financial mismanagement arises as a result of the employee's action/inaction).

5.4 Performance improvement meeting

- 5.4.1 Following discussion with their HR Business Partner, the Manager will write to the employee and invite them to attend a performance improvement meeting.
- 5.4.2 The employee should have a minimum of 5 working days notice of the meeting. The letter will outline:
- the date and location of the meeting
 - the reason for the meeting,
 - the name of the manager that will conduct the meeting
 - the employee's right to be accompanied by a Trade Union Representative or colleague.
- 5.4.3 A representative from HR will also attend the meeting.
- 5.4.4 The purpose of the meeting is to: -
- Let the employee know that the Manager remains concerned about their level of performance.
 - To formally remind the employee of the performance standards required
 - Allow the employee to give any explanations about the causes for the poor performance.
 - Review any actions taken to date
 - Allow discussion between the employee and Manager about the best way to improve work performance moving forwards
 - To agree the level of support, supervision and where necessary training required
 - To agree a review date giving the employee a reasonable timescale for improvement, or to demonstrate that they are capable of performing all duties of the job. (Review periods should not exceed three months in duration)
- 5.4.5 The Manager will write to the employee to confirm the discussion and the actions agreed at the meeting. This letter will detail:

- a. The date and time that the meeting took place
 - b. The people present at the meeting
 - c. The areas where improvements are required
 - d. The agreed course of action, including:
 - i. The improvements that are expected
 - ii. Details of any review period and how this will be monitored
 - iii. The measures available to assist the employee in reaching the required performance standards
 - iv. The consequences of failing by the end of the review period, to achieve the level of performance required.
- 5.4.6 Following the meeting the Manager, in liaison with their HR Business Partner will ensure that any support or training offered is made available to the employee. The Manager will also need to ensure that the employee's work performance is monitored on a regular and frequent basis.
- 5.4.7 The employee should be informed of their progress throughout the review.
- 5.4.8 If an employee's performance is being formally monitored, they will not be eligible to receive annual salary increments until their performance has reached the required level. HR Business Partners will advise payroll of any such cases following the completion of the Performance Improvement Meeting.
- 5.4.9 If, at the end of the review period, the employee's performance has reached the required standard then the Manager will write to the employee and confirm that the performance improvement review has been completed. A copy of this letter must be forwarded to HR.
- 5.4.10 If the employee is successful in reaching the required performance standards and they had not been awarded a salary increment, as a result of the performance review, then the HR Business Partners will inform payroll (where necessary) that this can now be awarded. This will take effect from the date that the review period was completed and will not be backdated.
- 5.4.11 If the employee has not made sufficient improvements during the review period and they have not reached the required level the Manager must contact their HR Business Partner to consider whether the employee should be referred to stage 3.
- 5.4.12 If it is decided to refer the employee's case to stage 3, the Manager will inform the employee of the decision and explain that a case report will be prepared for the Director of Service who will consider termination of their employment at a capability hearing. This will be followed up in writing by HR.

6. Capability Hearing

- 6.1 The Manager will be responsible for the preparation of a case report. This should detail:
- The areas where the employee has failed to meet the required performance standard
 - The effect that the employee's performance is having on the Service area

- The action taken to date to support the employee in reaching the required performance level
- 6.2 On receipt of the case report, the Director or an officer delegated to act on their behalf will arrange a capability hearing. The employee should be given a minimum of 5 working days notice and must be informed in writing of:
- The date and time
 - The reason for the meeting
 - The name of the person conducting the meeting
 - Their right to representation
 - That should the employee be held incapable of performing their duties to the required standard, their employment with the Council will be terminated.
- 6.3 A member of HR will be present at all Capability Hearings.
- 6.4 The Manager will enclose any documentation which they intend to use at the hearing with the letter. This will include a copy of the case report.
- 6.5 Should the employee wish to refer to any documented evidence or call witnesses during the hearing they will need to supply copies or the names of witnesses at least 3 working days prior to the Capability Hearing.
- 6.6 Structure of the Capability Hearing
- 6.6.1 The officer conducting the hearing will be responsible for introducing all parties and will explain the purpose of the hearing. They will also ensure that:
- The employee has received copies of the procedure and any documentation which will be presented by the Council
 - That the Council have been provided with any documentation which the employee wishes to refer to.
 - They confirm whether the employee has chosen to bring a representative and take a note of the response
 - They confirm whether any witnesses are to be called
- 6.6.2 The employee's manager will then present the case explaining why they have referred the employee to stage 3.
- 6.6.3 Questions can be asked of the manager by the employee, their representative, the hearing officer or the HR representative.
- 6.6.4 The Manager may then call their witnesses and ask questions of them. The employee, their representative, the hearing officer and the HR representative may ask questions of the witness following the completion of the Manager's questions.
- 6.6.5 The employee or their representative will then have the opportunity to present their case to the Manager and hearing officer and will call any noted witnesses.
- 6.6.6 The Manager, the hearing officer and HR representative may ask questions of the witness following the completion of the employee or their representative's questions.

6.6.7 Following the completion of the presentations, the hearing officer will then call an adjournment at which point, the Manager, employee and their representative will be asked to leave.

6.6.8 During the adjournment the hearing officer and HR representative will review the evidence presented and formulate a decision regarding the employee's continued employment.

6.6.9 In coming to a decision, the following information will be considered:

- The action taken to improve the employee's performance and the results of this.
- The impact or consequences of the performance matter
- Any mitigating circumstances

6.6.10 Possible outcomes are (but are not exhaustive to):

- Dismissal on the grounds of capability
- A further final review period
- Consideration for redeployment

6.6.11 If the hearing officer decides to allow a further review period they must clearly indicate the performance level required and outline how this will be monitored and by who. Any further review period instigated must not exceed three months in duration.

6.6.12 If the hearing officer decides that the employee should be considered for redeployment, then an active search (in line with the Council's redeployment procedure*) will begin. The timescale for finding alternative work for the employee is three months from the date of the decision.

6.6.13 If alternative work is not found during this time, the capability hearing will be reconvened and the individual's employment terminated.

*If alternative work is found, offered and accepted, the rate of pay, grade and other conditions would be those applicable for the new post.

6.6.14 Once the hearing officer has reached a decision the employee, their representative and manager will be recalled to the hearing and will be informed of the decision.

6.6.15 This will be confirmed in writing to the employee, along with their right to appeal within 5 working days of the date they were informed of the decision.

7.0 Appeals Process

7.1 Where an employee has been dismissed on the grounds of capability they will have the right to appeal. The appeal will not take the form of a re-hearing of the case. The purpose of the appeal is to determine whether:

- The correct procedures were followed, and/or
- The decision of the hearing officer was reasonable in the circumstances

7.2 Appeals must be lodged within 7 days of the letter confirming the outcome of the capability meeting, using the notification of appeals form (see appendix 1).

- 7.3 Appeals will be heard by a Director or with their authority, an officer delegated to act on their behalf.
- 7.4 A member of HR will be present on all appeal panels.
- 7.5 In all cases, employee's will be given 5 working days notice of the appeal hearing and will have the right to be accompanied by a colleague or Trade Union official.
- 7.6 The employee will be notified of the outcome of the hearing in writing. All decisions reached at the appeal hearing will be final.

NOTIFICATION OF APPEAL FORM

Name:

Date of original hearing:

I wish to appeal against the decision which was issued against me following the Capability Hearing held on the above date.

Reason/s for Appeal:

(Please continue on a separate sheet if necessary)

I intend/do not intend* to be represented at the Appeal hearing. (* delete as applicable.)

Name and address of representative [if applicable]:

Do you wish any further documentation/correspondence relating to this appeal to be sent direct to your representative, in addition to you. **YES/NO** * (* delete as applicable.)

I understand that if a meeting of the Appeal Panel is convened to hear my appeal and that if, without good reason, I fail to attend that meeting then my appeal may be treated as having been withdrawn.

Signed:.....

Dated:.....

Version Number	Creation Date	Changes Made	Changes Made By:	Authorised/Checked?
1.5	May 2019	Replaced Behaviours with Values and updated terminology	Kerry	Y
1.4	Jan 2011	Replaced two ticks with Disability Confident	HR Team	Y
1.3	Jan 2011	Rebranded to City	HR Team	Y
1.2	Jan 2011	Appeals – changed DCE to Director	HR Team	Y