



Procedure - Capability v3.0



Policy Statement

The Capability policy is to be used in situations where an employee's performance does not meet the required standard. The intention is to ensure that if such issues do arise, they are dealt with in a way that is both clear and fair to the employee, as well as assisting him/her to improve their performance.

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Introduction

The Capability policy details the process of managing an employee's capability issues.

The policy has been created to provide one document which highlights the potential reasons for capability issues and offers resolution methods and guides managers and employees through the process of capability informal and formal processes.

Aims of the Policy

This policy aims to provide managers and employees with a concise procedure for dealing with capability matters in order to ensure fair, consistent treatment for all employees throughout the council and to encourage employees to achieve and maintain standards of performance and competence.

This policy has been produced in order to:-

- Provide appropriate support to the employee to assist him/her to achieve the standards expected and ensure that the employee is clearly informed of what is expected and that he/she is given an appropriate time scale to achieve these standards.
- Provide a framework to help employees in a positive and sensitive way, by providing feedback, direction and support and works towards achieving performance concerns are handled in a clear, fair and consistent manner.

Application/Scope of the Policy

The policy applies to all council employees with the exception of:-

- Staff appointed by a school governing body
- Directors and Heads of Service
- Council employees working their probationary period.
- Agency workers
- Casual, relief & volunteer staff
- Modern Apprenticeships & other traineeships

The policy will apply to full-time, part-time, fixed term and temporary employees who have an employment contract with the council, regardless of the hours worked.

The Policy will be used to address all forms of performance concerns apart from:

- Probationary period issues (refer to the Probationary policy)
- High levels of absence (refer to the Sickness Management Policy & Framework)
- Disciplinary issues or misconduct (refer to the Disciplinary policy)

The policy works to allow a general overall timescale of improvement of three months. This takes into account the informal and formal process.

Engagement /Participation/Consultation

This policy has been drafted taking account of feedback from employees attending Staff Road shows & Breakfast meetings. It has also been consulted and negotiated with the Senior Leadership Team, managers and Trade Unions.

Legal & Other References

This policy is written in accordance with the Human Rights Act 1998 and with consideration to the following legislation:-

- Employment Act 2002
- Employment Rights Act 1996
- Equality Act 2010

No job applicant or employee will experience discrimination, harassment or bullying, or receive less favourable treatment because of their age, disability, gender reassignment, marital or civil partnership status, race, pregnancy or maternity, religion or belief, sex, sexual orientation or caring responsibilities.

Capability Policy Details

What are Capability Issues?

The Employment Rights Act 1996 gives a legal indication of what is meant by capability – ‘capability assessed by reference to skill, aptitude, health or any other physical or mental quality’.

In simple terms, capability is an issue when the employee cannot do the job, rather than will not do the job.

Capability issues can occur at any time in an individual's working life and for a variety of reasons. Exploration into why patterns of behaviour have altered, or why individuals are not as competent as they were, require Supervisor/Line Managers to enquire why such changes are occurring and investigate if the council can offer any support.

Underperformance can be as a result of an underlying health issue, disability, language barrier or other matter related to equality and this should be considered when determining what course of action is to be taken.

If the Supervisor/Line Manager is made aware, or suspect that health or medical issues contribute to capability issues, then they should refer to point 9.1.10 – 9.1.13 for procedural adherence.

When should this policy be used?

In order to help clarify when it is appropriate to use this procedure the following are given as examples of where concerns may arise about an employee's capability to undertake their job role. These may include:

- Changes in the nature and allocation of work
- An inability to cope with a reasonable workload
- Reorganisation or redefinition of role
- Poor overall organisation and inability to prioritise work
- Lack of aptitude, skill or experience
- Lack of professional insight

There may also be issues that impact on capability that are the responsibility of management, but only come to light when there is a discussion about an employee's capability.

Examples may include:

- Physical environment
- Lack of supervision
- Absence of facilities crucial to the employee's performance
- Inadequate training

Capability procedure

The procedure within the policy works to allow a general overall timescale of improvement of a minimum of three months'. This timescale takes into account the informal and formal process. However, it is recognised that some job roles or professions may require more flexibility concerning the improvement timescales. This application of determining the correct and appropriate timescale for improvement is the responsibility and accountability of the manager. **However, the timescale to complete the capability procedure should not exceed a 6 month period.**

Capability improvement maintenance timescale

At the conclusion of any of the informal or formal stages, improved and accepted performance standards are required to be maintained for a **minimum period of twelve months**. Should performance standards deteriorate within that time frame, then the employee reverts back into the capability process and progresses onto the next stage of the capability review procedure.

Mediation within the Capability procedure

Throughout both the informal and formal procedure, there may be occasions when opinions held by the Supervisor/Manager and the employee may differ, to the extent that mediation may be required. In such circumstances, please contact HR, who can advise of mediators utilised by the council.

Pay Incremental Suspension

During the Formal Procedure (Stage 1- 3 Capability meetings), the employee's normal incremental progression will be suspended.

The suspension will remain until the Capability issue is satisfactorily resolved. For further information and guidance on this, please refer to **Appendix A**.

Redeployment consideration

If, during the informal or formal stages of the capability review procedure, the employee acknowledges that they are no longer capable of undertaking their current job role duties, they may ask to be placed on the redeployment list. This will allow for their Manager and the HR Department to work with them in trying to find alternative employment. During this time, the employee will still continue to progress through the stages of the Capability procedure.

What should happen if a person believes they are suffering from stress?

It may be appropriate for the employee to complete a Stress Questionnaire. The employee may wish to complete one with support from their Supervisor/Line Manager or complete one by themselves, without their Supervisor/Line Manager intervention.

This questionnaire can be provided by the Occupational Health Department, together with further advice on the outcome of the completed questionnaire and any support provision available from the Authority.

Right to Representation

An employee will have the right to be represented or accompanied at any formal part of the procedure by a Trade Union representative or workplace colleague. The employee will be informed of these rights prior to any formal interview.

Although the employee does not have the right to representation at informal meetings, the council will allow a Trade Union representative or workplace colleague to accompany employees to any informal meetings.

If the employee is not a member of a Trade Union they may request support from an HR Specialist or independent middle manager who can talk them through the process and provide advice on their rights. The HR Specialist or manager will not however be able to attend any capability meetings with the employee and the employee should therefore seek support from a colleague if they wish to have a representative with them.

It will be up to the employee to arrange for someone to attend the meeting in this capacity. Should their chosen companion not be available on the day of the meeting, then the employee should attend on their own, arrange for someone else to accompany them or request a postponement.

External legal representation will only be permitted in cases where proven allegations of misconduct would lead to the employee's referral to the Independent Safeguarding Authority or statutory registration body.

If an employee in this situation wishes to be represented by an external legal representative they must advise the Deciding Officer at least five working days prior to the capability hearing.

Postponement

An employee may request one reasonable postponement of a meeting in the following circumstances:

If the employee's chosen representative is not available on the original date, the council will postpone the capability meeting for up to five working days. In such cases the council will offer one alternative date. If the employee's representative remains unavailable for this alternative date, the employee will be expected to arrange an alternative representative.

In exceptional circumstances where the employee is unable to attend a capability meeting due to a situation beyond their control the council will offer one alternative date.

Failure to attend a Capability Meeting

The manager will write to the employee with details of the time, date and location of the capability meeting. Enclosed will be a confirmation slip that the employee should complete and return to the manager within the timescale allowed. If the employee fails to return the confirmation slip, the manager will make every effort to contact the employee to confirm that they are attending the meeting.

If the employee fails to attend a capability meeting or fails to inform their manager that they are unable to attend prior to the meeting the meeting will proceed in their absence. The employee's representative will have the opportunity to present the case on their behalf, and any submission by the employee or their representative will be considered.

A decision will be taken based on the information provided and the employee will be informed of the outcome of the meeting and their right to appeal in writing within 5 days of the date of the meeting.

Failure to attend a Capability Meeting due to Sickness

An employee who is certified medically unfit to work will still be expected to attend the capability meeting. If the employee's medical condition is such that they believe they are unable to attend the meeting, they should contact their manager immediately. In exceptional cases the advice of the Council's Occupational Health Advisor, an independent consultant, or GP (with the employee's consent) may be requested to advise on their medical fitness to attend the capability meeting. It is unlikely that stress related illness, attributed to the capability proceedings, will be an acceptable reason for an employee not to attend a capability meeting. In such circumstances it is in the interests of the employee that the proceedings are completed as quickly as possible.

On the very rare occasions when an employee is unable to attend a capability meeting due to sickness, the Council reserves the right to continue without unreasonable delay. For example, written submissions by the employee or their representative to present the case on their behalf.

Performance Management

Managers are required to set and monitor realistic and measurable performance standards and/or objectives for staff. This may incorporate elements contained from a range of sources including:

- Job description
- Induction training
- Job-specific training
- Departmental standards
- Professional standards

During the performance appraisal process, an employee will be encouraged to contribute to objective setting. Clarity of standards and objectives need to be established.

Where a job changes significantly, the manager will consider the training needs which arise and agree and implement a training plan, with the employee, to meet those needs. Regular reviews enable an employee's skills, knowledge and aptitude to be discussed, as well as providing an opportunity for developing the employee.

As Managers are responsible for ensuring high standards of work from their staff, they must handle any performance concerns promptly and sensitively. If a Manager is concerned about someone's performance, they must discuss these concerns with the employee supportively. They should try to understand the reasons for the performance gap and put into place measurements which should bring about improvements.

It is recognised that an initial informal input may not always be successful in raising performance to the required standard.

The following formal procedure should only be used when informal discussions with an employee have taken place and they have been given the chance to improve within a reasonable timescale.

The procedure provides a structure for formal performance discussions to take place over an agreed period of time. Ultimately, should an employee not manage to achieve the agreed standard, they may be dismissed from their post. However, this action should be seen as a last resort and only considered when all other reasonable options have been explored.

Grievance raised during other proceedings e.g. disciplinary, redundancy etc.

There may be occasions where an employee, who is subject to another procedure, raises a grievance. The way in which this is handled will depend on the facts of each case. An assessment of the facts should take into account how the grievance is related (if at all) to the matter in hand.

Whether or not the grievance and the ongoing case are associated will be determined by the appointed Deciding Officer of the case.

Where the grievance and the other case are related

In exceptional circumstances it may be appropriate to temporarily hold the ongoing proceedings while the grievance matter is investigated further. The aim here is to establish whether the complaint has a material impact on the case and eventual outcome.

Be mindful that other ongoing proceedings should not be delayed unnecessarily.

Where the grievance and the other case are not considered to be related

In such cases it is advised that both cases are dealt with separately and that they run concurrently. The proceedings of the case in question may not be impacted by the grievance raised and should therefore be able to continue as planned.

Refer to the Grievance procedure for details relating to the grievance process.

Capability – The Procedure

Within the Capability Procedure, there are two elements, the informal procedure and the formal procedure.

The Informal Procedure

The initial, informal approach will be of a welfare/advisory nature. It will include a discussion aimed at determining the root of the issue to see if a problem needs to be addressed; if so the aim is to resolve the problem by constructive action.

The informal meeting will be between the employee and his/her Supervisor/Manager. If a problem is recognised; working together, they will agree the improvement and expected level of performance within a **two week period** (or alternative agreed period). Agreement will also include how the individual's performance will be monitored.

In some circumstances, it may be necessary to move an employee to alternative duties, e.g., to undertake training duties.

The employee must be advised that if the informal approach fails and the problem is not resolved to the satisfaction of the Supervisor/Manager within the **two weeks** (or alternative agreed period), it will be necessary to consider adopting the more structured, formal approach – the Formal Procedure.

The employee has the opportunity to be accompanied at the meeting by a Trade Union representative or a work colleague. It is the employee's responsibility to organise this.

The Supervisor/Manager will record the outcome of the meeting. A copy of these confidential notes need to be given to the employee. (see **Appendix B**)

If the employee's performance improves adequately over the **two weeks** (or agreed alternative timescale), then at the pre-determined review meeting, it will be confirmed by the Supervisor/Manager that the process will end at this stage and advise that the improved performance standards are to be maintained for at least twelve months, otherwise the employee will enter back into the capability process at the next stage further on than when they left it.

However, if it is agreed a further informal review period may be organised; this will be at the manager's discretion.

If, at the pre-determined review meeting, the employee's performance remains unsatisfactory, then the Manager will commence the formal process.

Supervisors and Manager's should be mindful that an underlying health problem, which may not be apparent, could be the cause of poor performance. Or that under-performance could be linked to a disability, language barrier or other matter related to equality issues, and they should take this into account when agreeing improvement plans with individuals. For example, reasonable adjustments might be required, or further training to help them fully undertake the role.

If a health issue arises, it should be considered and if appropriate, the employee referred to Occupational Health. At this point the capability process may be suspended, pending receipt of information from Occupational Health confirming there is a health or medical reason for the capability issue.

Following the employees referral, if Occupational Health advise the employee has a health issue causing them capability issues, then this is a medical capability issue which needs to be dealt with via the Sickness Management Policy & Framework. Namely, that the Supervisor/Manager refers the employees case to the Health Management Panel as it is a complex health management case and await recommendations or suggestions.

If Occupational Health advise there are no medical problems causing capability issues, the capability procedure can re-commence at the stage which it was suspended.

The Formal Procedure

Stage 1 Capability Meeting (formal review)

The formal meeting will be between the employee and his/her Supervisor/Manager. The Supervisor/Manager should arrange to meet formally with the employee, giving them 5 working days written notice of the meeting. The invitation letter will include:

- That this is a stage 1 formal Capability meeting.
- Details of who will be present at the meeting.
- A summary of the performance concerns to be discussed.
- The right to be accompanied by a trade union representative or colleague at the meeting.
- A copy of the Capability Policy.

See **Appendix C** for a template of the invitation letter.

During the meeting, the employee should be advised of performance concerns in a clear and specific way. Reasons for the continuing under- performance should be explored, and the employee should be encouraged to have their say. Clear targets or tasks should be set for the employee. To be effective, the targets or objectives set should be SMART (Specific, Measurable, Achievable, Realistic & Time-bound). These should be easy to measure and should be set at a standard which would usually be required of such a post holder. Support measures should also be agreed and could include, for example, further training, mentoring or closer supervision. (see **Appendix D** for target setting advice).

The Supervisor/Manager should take into account that under- performance could be linked to a disability, language barrier or other matter related to equality issues, and they should take this into account when agreeing improvement plans with individuals. For example, reasonable adjustments might be required, or further training to help them fully undertake the role.

A timescale for a formal review should be set. Ideally one month following the meeting; however this is dependent upon the job role and management will apply flexibility and discretion in this matter. It is recommended that the maximum review period should be two months. Employees will have an informal review at least every week during this time frame and it should be agreed who conducts these reviews with the employee.

It is vital that any support offered is arranged in good time, so that the employee has received every support possible to achieve the areas of improvement.

Within two working days of the meeting, the Supervisor/Manager will write to the employee, confirming what happened at the meeting. The letter should include:

- Who was present at the meeting.
- The performance concerns that were discussed.
- Any key comments or concerns from the employee.
- Clear details of the improvements in performance to be achieved by the next review
- A summary of any agreed support measures.
- The overall timescale the employee has been under capability review, including informal reviews.
- The implications of not improving – progression to the next Capability stage.
- The employee should be made aware that dismissal could ultimately be an option if performance doesn't meet the required standard.
- To conclude, confirmation of date/time/venue of the stage 2 capability review meeting.

The Supervisor/Manager should retain a copy of all notes taken during the meeting(s) and copies of letters provided to the employee. (**Appendix E** for outcome letter & **Appendix B** for the Improvement Plan Form).

Stage 2 Capability Meeting (formal review)

At the stage 2 capability meeting, this formal review meeting will normally be led by the same Supervisor/Manager who held the stage 1 meeting.

During the meeting, the employee's performance since the stage 1 meeting is reviewed. The employee should be asked for their comments on progress and on the support they have received.

If the employee has reached the performance standards required, then the capability process concludes naturally and the Manager provides written correspondence to confirm this, advising the improved performance standards are to be maintained for at least twelve months, otherwise the employee will enter back into the capability process at the next stage further on than when they left it. (see Appendix F)

If there are any outstanding performance concerns these should be clearly explained and targets for improvement provided. Any support measures, should be agreed via an updated Improvement Plan (**Appendix B**). During the meeting, the employee should be made aware that failure to achieve the required standards will put their employment with the council in jeopardy.

A timescale for a formal review should be set. Ideally one month following the meeting; however this is dependent upon the job role and management will apply flexibility and discretion in this matter. It is recommended that the maximum review period should be two months. Employees should benefit from an informal review at least every week during this time frame and it should be agreed who conducts these reviews with the employee.

Within two working days of the meeting, the Supervisor/Manager will write to the employee, outlining what was agreed at the meeting. The letter should include the information as outlined in point 7.2.6. **This letter should clearly warn the employee that their employment will be at risk if they do not achieve the required standards within the agreed timescale and that a decision to end their employment could be made at the meeting.** (See Appendix F)

Stage 3 Capability Meeting (final review)

This final review meeting will be chaired by a Head of Service, or nominated representative. If the manager dealing with Stage 1 & 2 was a Head of Service, another Head of Service may chair the hearing at stage 3.

During the meeting, the Head of Service (Deciding Officer) will recap on the capability review process that has taken place so far and listen to any representations from the manager, the employee or their representative. The meeting will be adjourned; leaving the Deciding Officer to review each parties input and make a decision.

Decisions that could be taken at this point include:

- Dismissal
- Permanent downgrading the employee
- Retention in post as standards have been achieved.

This decision will be confirmed in writing within two working days of the meeting. (See **Appendix G**).

Should the employee be dismissed, the letter will include:

- The effective date of dismissal
- That the dismissal is due to incapability to adequately perform the role for which they were employed
- A request to return any Council property
- Details of the right to appeal

Appeals

Attachment:

<u>Appendix A</u>	<u>Increment / Pay Scale</u>
<u>Appendix B</u>	<u>Capability Review Meeting : InformalStage</u>
<u>Appendix C</u>	<u>Invitation to Stage 1 Capability Review Meeting (letter format) Target</u>
<u>Appendix D</u>	<u>Setting / SMART criteria</u>
<u>Appendix Ea</u>	<u>Outcome of Stage 1 Capability Review Meeting (letter format)</u>
<u>Appendix Eb</u>	<u>Capability Review Outcome Form</u>
<u>Appendix F</u>	<u>Outcome of Stage 2 Capability Review Meeting (letter format)</u>
<u>Appendix G</u>	<u>Outcome of Stage 3 Capability Review Meeting (letter format)</u>