

People Framework

Capability Procedure



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Tracking

Policy Title	Capability Procedure		
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Service			

Revision History

Revision Date	Revisor	Previous Version	Description of Revision

Document Approvals

Each revision requires the following approvals:

Sponsor Approval		Name	Date

1. Setting Performance Standards

Employees have a contractual responsibility to achieve and maintain an acceptable level of performance at work and to engage with their managers to ensure that they have a clear understanding of what is expected of them.

The Council has set expected standards of performance and behaviour through the Performance Management Procedure and Behaviour Framework.

Managers will set team and individual goals and objectives consistent with the employee's role profile and the Council's Behaviour Framework as outlined in the Performance Management Procedure.

2. Settling In Period

Where performance concerns are identified during the employee's Settling In period, these will be addressed in line with the Induction and Settling In Procedure.

3. Disciplinary and Capability

Where performance concerns are identified, managers should assess which procedure will apply, seeking advice from HR as appropriate. For example, a refusal to perform work to the required standard or in a manner that has been requested would ordinarily be a disciplinary rather than a capability issue.

Advice should also be sought in circumstances where capability and disciplinary issues are potentially interrelated. There may be occasions where, as a consequence of information obtained or circumstances arising under one procedure, it is appropriate to initiate action under other processes.

4. When performance concerns are identified

Where employees are unable to fulfil the key requirements of their role as defined by the role profile, behaviour framework and goals / objectives, managers will seek to provide additional support to enable them to reach the required performance standards.

Any concerns relating to work performance will be discussed with the employee at an early stage by the manager via the My Performance Conversation as outlined in the Council's Performance Management Procedure (LINK). Managers will seek HR advice as appropriate.

5. Support during the Capability Procedure

Managers will explore options for supporting employees in reaching the required performance standards. These may include identifying a mentor, the use of a coach or coaching techniques and/or more formal training and development. All identified support agreed should be documented, including expected outcomes, and regularly monitored to continually assess its effectiveness. Where performance concerns have not been addressed through informal interventions, the manager will arrange a Performance Meeting at Stage 1 of the Capability Procedure.

6. Performance Meeting – Formal Stage 1

Managers will write to invite employees to a Performance Meeting giving at least 7 calendar days' notice. [Link Stage 1 Invite Letter](#)

The Performance Meeting will normally be conducted by the employee's manager and may be attended by a member of the HR team.

Employees are entitled to be accompanied at the Performance Meeting by a member of the Staff Consultative Group, trade union representative or work colleague.

At the meeting managers will:

- Explain why the meeting has been arranged
- Explain what is expected in terms of performance/conduct standards
- Explain how the employee is not meeting the required standards, giving examples (e.g. Refer to the Action Plan at the informal stage)
- Explore the reasons why the employee is not meeting these standards (for example, personal and/or work related issues)
- Provide the opportunity for the employee to explain or discuss issues
- Discuss any support which has already been provided and the effectiveness of this
- Explore any support which can be provided
- Explain how the employee's performance will be monitored
- Explain the next stage if performance does not improve
- Set a timescale for review

The manager will confirm that the employee's performance will be monitored formally at Stage 1 of the Council's Capability Procedure and ensure that a copy of the Capability Procedure is made available to the employee.

The manager will work with the employee to develop a written performance improvement plan. A performance improvement plan is a series of measures designed to help the employee to reach the required standards. The performance improvement plan will include details of specific goals/objectives, dates by which these should be achieved and any support required to assist the employee in achieving the required levels of improvement. (LINK -PIP).

The manager will confirm the outcome of the Stage 1 formal Performance Meeting to the employee in writing within 7 calendar days of the meeting. [TEMPLATE](#)

The letter will provide the formal record of the meeting and will include:

- The areas in where performance has fallen below the required standards
 - A copy of the Performance Improvement Plan
 - Any additional training or support that will be provided as part of the procedure
 - The duration of the review period
 - The frequency of monitoring meetings during the review period
 - The potential consequence of continued underperformance within the set timescales
- The employee will be asked to sign a copy of the letter to confirm receipt and understanding.

The manager will set a timescale for review. The review period should be appropriate to the complexity of the situation and the role of the employee and will not normally be less than four weeks or exceed twelve weeks.

The manager will meet regularly with the employee throughout the review period to provide monitor progress, to provide feedback and support and to ensure that the PIP is regularly updated.

Managers must keep HR informed of progress.

Stage 1 - Performance Review Meeting

At the end of the review period, the manager will hold a Performance Review Meeting.

Employees are entitled to be accompanied at the meeting by a member of the Staff Consultative Group, trade union representative or work colleague.

At the meeting the manager will:

- Explain why this meeting has been arranged
- Review the PIP and provide feedback on the employee's performance during the review period
- Discuss any support provided during the review period
- Discuss any ongoing performance concerns with examples
- Allow the employee to explain and feedback
- Explore any ongoing training / development or support needs
- Provide progress against the Performance Improvement Plan
- Explain the next stage and set a further timescales for review (if appropriate)

Possible Review Outcomes

No further action (based on satisfactory improvement as set out in the PIP)

Where the employee's performance has improved and meets the required standards the Stage 1 review will be concluded and the manager will continue to hold regular My Performance Conversations.

If the standard of performance deteriorates within 12 months of the Stage 1 review being concluded, managers must seek HR advice and the employee will re-enter the Capability Procedure at Stage 1.

Escalation to Stage 2 Performance Improvement meeting

Where the employee has not met the requirements set out in the PIP the manager will escalate arrange a Stage 2 Performance Improvement Meeting.

Escalation to Stage 3 Capability Hearing

Where the employee has not met the requirements set out in the PIP and their performance has deteriorated significantly, the manager will arrange a Stage 3 Capability hearing in line with the Council's Hearings Procedure.

HR advice must be sought prior to escalating to a Stage 3 Capability hearing.

7. **Performance Improvement Meeting – Formal Stage 2**

Managers will write to invite employees to a Performance Improvement meeting giving at least 7 calendar days' notice. (Link Stage 2 Invite Letter).

Employees are entitled to be accompanied at the meeting by a member of the Staff Consultative Group, trade union representative or work colleague.

At the meeting managers will:

- Explain why this meeting has been arranged
- Clarify and explain what is expected in terms of performance /conduct standards
- Discuss ongoing performance concerns with examples (e.g. Refer to the PIP at the formal Stage 1 of the Capability Procedure)
- Discuss any ongoing support provided
- Allow the employee to explain and feedback
- Explore any ongoing training/Development or support needs
- Provide progress against the Performance Improvement Plan
- Explain the next stage if performance does not improve
- Set a timescale to review

Managers will provide an opportunity for the employee to explain or discuss any factors affecting their performance. Managers will confirm with the employee that their work performance will be monitored at formal Stage 2 of the Capability Procedure and ensure they have a copy of the procedure.

Managers will update the written performance improvement plan with the employee, to include specific goals/objectives, dates by which these should be achieved and any support required to assist the employee in meeting the required levels of improvement. (LINK -PIP). The Performance Improvement Plan will be shared with the employee.

Managers will confirm the outcome of the Stage 2 formal Performance Improvement meeting in writing within 7 calendar days. The letter will provide a formal record of the meeting and the employee will be asked to sign a copy to confirm receipt and understanding.

The outcome letter will include:

- The areas in where performance continues to fall below the required standards
- A copy of the Performance Improvement Plan
- The timescales of meeting the goals/objectives
- Any additional training or support that will be provided as part of the procedure
- The duration of the Stage 2 review period
- The frequency of monitoring meetings during the review period
- The potential consequence of continued underperformance within the set timescales

Managers will agree a timescale for review. The agreed timescale should be appropriate to the complexity of the situation and role of the employee. However, unless there are exceptional circumstances, it should not normally be less than four weeks or exceed twelve weeks. Managers will meet with the employee to provide feedback on their progress throughout the agreed review period. Managers must keep the PIP updated during the review period. Managers must keep HR informed of

the meeting and outcomes.

8. Performance Improvement Review Meeting – Formal Stage 2

Managers will hold a Performance Improvement review meeting as arranged after the set period of 4-12 weeks.

Employees are entitled to be accompanied by a member of the Staff Consultative Group, trade union representative or work colleague.

At the meeting managers will:

- Explain why this meeting has been arranged
- Review the PIP and provide feedback on the employee's performance during the review period
- Discuss any support provided during the review period
- Discuss any ongoing performance concerns with examples
- Allow the employee to explain or feedback
- Identify/ Discuss/ Explore any ongoing training/development or support needs
- Provide progress against the Performance Improvement Plan
- Explain the next stage and set a further timescales for review (if appropriate)

Possible Review Outcomes

No further action (based on satisfactory improvement as set out in the PIP)

Where the employee's performance has improved and meets the required standards the Stage 2 review will be concluded and the manager will continue to hold regular My Performance Conversations.

If the standard of performance deteriorates within 12 months, managers must seek HR advice and the employee will re-enter a Stage 2 Performance Improvement meeting. Employees have the right of Appeal at stage 2.

Escalation to Stage 3 Capability Hearing

Where the employee has failed to improve or where some improvement has been demonstrated but performance is still below the acceptable level, the manager will arrange a Stage 3 Capability hearing. HR advice must be sought prior to escalating to a Stage 3 Capability hearing.

9. Capability Hearing – Formal Stage 3

Where the employee's ongoing unsatisfactory performance requires a referral to Stage 3, the manager will consult HR, who will convene a formal capability hearing in line with the Hearing procedure. Managers will be required to compile a report outlining the issues of the employee's capability obtained from evidences. This report will be presented by the manager at the Hearing. A copy will be given to the employee at least 3 working days before the Hearing. The report shall be precise, factual and shall contain the following information:

- Areas where the employee is failing to perform adequately
- The impact of the employee's ill health on their work performance where appropriate
- Actions already taken by managers to support the employee and if they were adequate

- The employee's acknowledgement of the issues
- Steps the employee has taken to improve
- Impact on the team and service delivery

The employee will be invited to a Capability Hearing in line with the Council's Hearings Procedure.

Stage 3 Hearing Outcome

The outcome of the Capability Hearing may be as follows:

Dismissal: Dismissal with Contractual Notice -

The Chair will decide to dismiss either on grounds of 'Some Other Substantial Reason' or 'Capability' (if under lying medical condition). The Chair will outline the reasons why and provide information on the employee's notice period in writing.

Redeployment

Redeployment options will be considered (subject to the availability and suitability of current job vacancies) where managers have reasons to believe that the employee will be able to perform well in an alternative role

Ill Health Retirement

Where medical opinion indicates that an employee is permanently unfit to return to work, the Chair must seek advice from HR and OH that the employee is eligible for permanent ill health retirement. The Council may offer the individual the option to apply for early retirement on the grounds of ill health, in line with the provisions of the Local Government Pension Scheme. (This option is only available to employees who have at least two years' continuous, local authority pensionable employment). This option will be discussed with the employee in full and as much information as possible will be provided to enable the employee to make an informed decision.

Where the option of ill health retirement has been explored as per advice from OH, or GP or any other medical professional that it is unlikely for the employee to return to work in the foreseeable future due to ill health who is also on local authority pension scheme, the Head of Service must ensure a sound decision between the Council, manager and the employee is reached, agreeing a termination date giving a notice period as entitled. HR advice and guidance should be provided to ensure compliance. Employees should be treated sensitively.

The Head of HR & OD and the Head of Financial Services will make the final decision demonstrating all appropriate measures have been taken to reach this decision in consultation with the employee in line with provisions of the Local Government Pension Scheme.

10. Appeals

An employee has the right to appeal against formal action taken under the Capability procedure following either Stage 2 or 3 meetings. Any appeal should be submitted in line with the Council's Appeals procedure.

11. Disability and Medical Issues

During the course of the Capability Procedure, if it is identified that the employee has a medical issue or disability which is impacting upon their performance, or the manager is otherwise already aware of a relevant medical issue or disability, the procedure may be paused for consideration of the next steps, which may include:

- Referral to Occupational Health
- Discussing with the employee/seeking a medical view as to whether the capability issues are related to a disability and, if so, whether there are reasonable adjustments that could be made to the employee's working arrangements (e.g. agreeing a change of duties, providing additional equipment or training or adjusting this procedure etc.).
- Any additional support required

Managers must monitor progress during any period of reasonable adjustment. The reasonable adjustments put in place will be regularly reviewed and their suitability assessed by the manager. If the capability issues have not been resolved by reasonable adjustment/s, the matter will continue to be dealt with under the capability procedure or, if appropriate, under the Absence Management Procedure. HR advice must be sought.

If the capability issue(s) have been resolved then no further action may be necessary, subject to regular ongoing review and monitoring. Where dismissal of a disabled employee is being considered on the grounds of ill health capability, managers will need to review whether the Council has met its duty to make reasonable adjustments.

Managers must seek HR advice and keep HR informed of any developments. Where ill health or poor attendance through sickness absence is identified, the Absence Management Procedure should be referred to. Absence through ill health will not necessarily result in a cessation or pause of the Capability Procedure, although due regard will be given to the matters in each particular case.

12. Annual Pay Progression

Employees subject to formal capability processes will not be eligible for annual progression.