



Capability Policy and Procedure

PART 1 – PERFORMANCE

1.0 Context

- 1.1 The purpose of this policy is to ensure employees are appropriately supported if they have difficulty in meeting the standards of performance required in fulfilling the role for which they are employed.
- 1.2 A good induction procedure and a clear understanding of the tasks to be undertaken, together with appropriate training, good supervision and regular appraisal are essential to an employee's good performance. Where an employee does not reach or falls below the required standard of work performance, the Clerk or the Committee must examine the circumstances to identify the causes of inadequate performance and to identify appropriate remedial action.

2.0 When to use the Capability Policy

- 2.1 In dealing with poor performance, it is essential to distinguish between misconduct and capability.
- 2.2 Misconduct normally involves a measure of personal culpability for which some form of action under the organisation's Disciplinary Procedure will be appropriate.
- 2.3 Lack of capability can be caused by a lack of understanding, ability, skill or experience. It may become apparent only when an employee has been in post for a while or revealed when there are changes in the nature of the job or the work environment. There may be a number of different causes – a lack of training, lack of understanding, poor management, or inadequate resources. This policy aims to help the Council clearly establish whether the cause is the employee's lack of appropriate ability and skills, whether it is a result of a lack of clarity about role, poor supervision or inadequate training or whether it is a combination of reasons.
- 2.4 The Capability Policy is designed to be used where capability rather than misconduct is thought to be the cause of poor work performance. In the case of misconduct the Disciplinary Policy should be used.
- 2.5 Where a work performance problem is identified that is persistent and warrants action beyond regular supervisory contact with an employee, the Clerk or the Committee must decide what appropriate action to take, including use of the Capability Policy.
- 2.6 The Clerk or the Committee must be satisfied that appropriate, well evidenced, training, support and guidance have been provided, especially if there have been significant changes in the employee's role.

- 2.7 The Capability Policy shall not be used during an employee's probationary period. Where there are concerns about an employee's performance during their probationary period, these should be addressed through regular supervision and probationary reviews. Where there are concerns about a probationary employee's capability, they shall either have their probationary period extended or they should not be confirmed in post.
- 2.8 Periods of review of targets etc. will vary according to the situation and shall take account of the needs of the Council and the level of skills development required of the employee. Overall, the resolution of questions of capability shall not normally take more than six months. The total number of review meetings will also depend upon individual circumstances. Generally, where there are greater numbers of targets to be met over longer periods there will be a greater number of review meetings.
- 2.9 When looking to improve an employee's capability, consideration should be given to a number of different options that include:
- Training
 - Personal development
 - Mentoring
 - Counselling
- 2.10 Capability review meetings shall not substitute for regular supervision. The nature and agenda of supervision meetings shall be reviewed to ensure that supervisory sessions remain supportive and broad in scope and do not focus merely on work performance difficulties as dealt with in capability review meetings.
- 2.11 There may also be a developmental need for the Clerk to help them be more supportive or provide better line management for the employee
- 2.12 Any person aggrieved by any decision concerning an assessment of their abilities that has taken place at any stage during the process shall have the right to use the Grievance Procedure to achieve a resolution of those specific issues, before the Capability Procedure is moved onto the next stage.
- 2.13 Where an employee's performance has not improved significantly by the end of the Capability Process, alternative options such as demotion or transfer to another post with the consequent loss of salary and benefits may be considered to be an appropriate as an alternative to dismissal.
- 2.14 Nothing in Capability Policy or Procedure shall be taken to compromise or remove an employee's statutory rights under employment legislation.
- 2.15 Where the capability issue concerns the Clerk, the matter will be dealt with by the Committee or a committee specially appointed by the Council for the purpose.

3.0 First Step - Informal Review

3.1 The Clerk or the Committee has the responsibility for identifying when there may be a question about an employee's capability to carry out their role. The first action is always for poor performance to be discussed with an employee as part of a regular supervisory arrangement with them, allowing the employee the opportunity to state their case and work towards improving their performance. It is probable that a fair and frank discussion about performance may highlight difficulties and unknown reasons for poor performance and clarify understanding about the level of performance required and require no further formal action.

4.0 Second Step - Formal Review

4.1 The Clerk or the Committee should formally investigate concerns about work performance before deciding to implement the Capability Policy and should, as part of their investigation draw together information from:

- notes of supervisory meetings
- the most recent appraisal
- the employee's training record
- the employee's induction programme
- the employee's overall work targets and job profile
- the employee's attendance records
- any relevant information about the employee's health

This list should is not exhaustive.

4.2 Based on the outcome of their investigation the Clerk or the Committee shall decide whether or not to use the Capability Policy.

4.3 Advice should be sought if the employee has a health problem thought to be affecting their performance.

4.4 When the Clerk or the Committee decides to use the Capability Policy, they shall convene a formal capability review meeting with the employee. The employee must be given notice of and papers relevant to this meeting at least ten working days in advance of it.

4.5 The employee may be accompanied by a workplace colleague, a trade union representative or a trade union official. The Chair of the Committee should chair the initial meeting to ensure that both parties are aware of their roles and responsibilities, to ensure that all issues about management and performance are adequately identified and an agreed course of action is implemented. A detailed, and confidential, record of the meeting and the outcomes agreed will be made and copied to the employee.

4.6 The capability review meeting shall:

- Identify if support and training for the employee has been at a level which an employee could normally expect

- identify those areas where the employee's work performance (including work targets) has fallen short of the standard expected
- review and, if necessary, re-set the employee's work targets
- identify the support that the employee will need to help them to meet their work targets
- set a programme of review of progress with work targets, support arrangements etc.

4.6 The employee shall have at least ten working days to consider the issues discussed at the capability review meeting. They shall, before the end of the agreed period, inform the Clerk or the Committee whether or not they agree with the outcome of the meeting. If agreement cannot be reached then the Clerk or the Committee should consider alternative action that may include use of the disciplinary procedure.

5.0 Final Step - Review Outcome

5.1 At the final capability review meeting, the employee shall be informed by the Clerk or the Committee:

- that they are now performing to the standard required and that no further action will be taken (unless performance problems recur); OR
- that they still do not meet the performance requirements for the job; OR
- that they do not meet the performance requirements for the job, but there might be suitable alternative employment to which the employee could be transferred on the appropriate terms and conditions for that post.

5.2 If the view is that the employee still fails to meet the agreed performance requirements for the job, the Committee shall decide if the employee is to be dismissed. A letter will be sent to the employee inviting them to attend a dismissal meeting with the Committee (or a committee specifically appointed by the Council for the purpose), informing them that a possible outcome of this meeting is a dismissal based on capability. The employee has the right to be accompanied at the meeting by a work colleague, a trade union official or a colleague.

5.3 At the meeting, the Chair of the Committee will:

- discuss the reasons for that have led to the meeting
- review the process so far in terms of support offered to allow the employee to continue in the role
- offer the employee the opportunity to raise any concerns with the process, provide evidence or make representations
- discuss the lack of availability of alternative roles
- ensure detailed notes are taken in the meeting.

5.4 If any new information comes to light at this meeting, the meeting will be adjourned to allow a full consideration of this information. The meeting will then be reconvened to inform the employee of the decision. Where a decision to dismiss is reached, this will be confirmed to the employee in writing.

- 5.5 The Committee's decision and the reasons for it shall be confirmed in writing and the employee shall be informed of their right to appeal against the decision. The period of notice shall be as specified in the employee's contract of employment.
- 5.6 As an alternative to dismissal, the employee may be asked to consider any re-deployment options available at the time where their skills and experience meet the person specification for the post.
- 5.7 An employee has the right to appeal against dismissal on grounds of incapability. The aim of the appeal is to review the decision in light of:
- a claim that the Capability Policy was not correctly followed
 - the employee's belief that the decision reached is unfair
- 5.8 An appeal against dismissal on grounds of capability will be heard by the Appeals Committee of the Council (if one exists) or the remaining members of the council who are not members of the Committee; or were witnesses at the original hearing; or are disqualified by reason of an appropriate level of interest in the matter.
- 5.9 The employee will be informed in writing of the decision of the appeal hearing.

END OF PART 1

PART 2 – ILLNESS OR DISABILITY

1.0 Policy purpose and scope

- 1.1 This policy outlines the process to be taken when an employee is incapable of carrying out their job role due to a long-term illness or a disability, the outcome of which could be a transfer to another position or a dismissal on the grounds of capability.
- 1.2 The Council should ensure the Council's absence management policy and procedure has been followed prior to commencing the capability policy, and advice taken if needed.

2.0 Alternative employment

- 2.1 If an employee is unable to continue in their current role due to ill health or disability, and no adjustments can be made, then the Council will make reasonable efforts to find suitable alternative employment within the Council. In these cases, the employee's terms and conditions may change from the current role to the alternative role and necessary training will be provided.

3.0 Ill-health retirement

- 3.1 In certain cases it may be more beneficial for the employee to take the ill-health retirement provisions in the Council's pension scheme. The pension provider should be contacted to ascertain if this is possible.

4.0 Ill-health dismissal

- 4.1 This process would be considered if the employee is unable to carry out their current duties and there are no suitable alternative roles identified within the Council.
- 4.2 Prior to considering dismissal, the Chair will:
- discuss the process with the employee
 - obtain medical opinion
 - consider any adaptations that can be made to their current role in line with the requirement to make reasonable adjustments under the Equality Act
 - consider any other suitable roles in the Council.

5.0 Protecting data

- 5.1 A capability procedure may include the processing of data about an employee's health. At the start of the process, employees will be informed of the reason for the Council processing the data, what the data is used for and what the lawful basis for processing that data is. All data will be processed in line with the Council's data protection policies.

6.0 Dismissal meeting

- 6.1 A formal invite letter will be sent to the employee inviting them to attend a dismissal meeting with the Committee (or a committee specifically appointed by the Council for the purpose),

informing them that a possible outcome of this meeting is a dismissal based on capability. The employee has the right to be accompanied at the meeting by a trade union official or a colleague.

6.2 At the meeting, the Chair of the Committee will:

- discuss the reasons for the employee's absence
- review the process so far in terms of support offered to allow the employee to continue in the role
- offer the employee the opportunity to raise any concerns with the process, provide evidence or make representations
- discuss the lack of availability of alternative roles
- ensure detailed notes are taken in the meeting.

6.3 If any new information comes to light in this meeting, the meeting will be adjourned to allow a full consideration of this information. The meeting will then be reconvened to inform the employee of the decision. Where a decision to dismiss is reached, this will be confirmed to the employee in writing.

6.4 Employees have the right to appeal against any dismissal decision. An appeal against dismissal on grounds of capability will be heard by the Appeals Committee of the Council (if one exists) or the remaining members of the council who are not members of the Committee; or were witnesses at the original hearing; or are disqualified by reason of an appropriate level of interest in the matter.

6.5 The employee will be informed in writing of the decision of the appeal hearing.

Review of Policy

This policy will be reviewed at least every three years, or earlier should legislation or practice require.