

# **CAPABILITY POLICY AND PROCEDURE FOR MANAGING POOR WORK PERFORMANCE**

## **1. OVERALL CONTEXT**

### **1.1 MANAGING EMPLOYEE INCAPABILITY (POOR WORK PERFORMANCE)**

This policy and procedure provides a framework to:

- Enable managers to remedy problems of poor work performance effectively and in good time
- Properly manage the often problematic area of poor work performance
- Provide an opportunity for employees and managers to communicate relevant information about matters affecting performance
- Ensure support and training is provided where applicable to improve performance
- Keep staff informed of what action will be taken if they fail to meet standards
- Deal with such matters openly, fairly and consistently

### **1.2 LEGAL CONTEXT**

The framework for managing poor work performance takes into account the provisions of the Employment Rights Act 1996, the Employment Relations Act 1999 and the Employment Act 2002, the Disability Discrimination Act 1995, the Race Relations (Amendment) Act 2000 and the ACAS Code of Practice on Disciplinary and Grievance procedures.

### **1.3 ADVERSE IMPACT ANALYSIS**

The Council wishes to ensure that its policies and procedures do not impact unfairly on employees with reference to race, sex, religion or belief, sexual orientation or disability. Managers must therefore ensure that the application of this policy and procedure does not have this adverse impact, for example, in the unbalanced use of formal processes on particular groups of employees compared to the informal processes.

### **1.4 EMPLOYEES COVERED BY THIS POLICY AND PROCEDURE**

This policy and procedure applies to all employees covered by the NJC conditions of service for Local Government Services (including support staff in schools) or the NJC conditions of service for Chief Officers in Local Authorities except:

New employees during their probationary service where separate monitoring processes apply

Temporary employees with less than 6 months continuous employment with the Council

Teachers, whether employed in schools or other units.

## 1.5 SCOPE

This policy and procedure does not deal with lack of capability due to sickness absence, or with misconduct, both of which are covered by separate policies.

## 1.6 MANAGEMENT AUTHORITY TO DECIDE THE CASE

Employee's immediate line manager	Presenting Manager	Meeting Manager
At or above Service Unit Manager/Director or equivalent	None	Employee's immediate line manager for Formal Stage 1
Team Leader/ Team Manager or equivalent or above, but below Service Unit Manager or Director	None if Meeting Manager is employee's immediate line manager  Otherwise employee's immediate line manager or other nominated manager for Formal Stage 1	Employee's immediate line manager or other nominated manager at or above  Team Leader/ Team Manager or equivalent for Formal Stage 1
Below Team Manager/ Team Leader or equivalent (middle management)	Employee's immediate line manager or other nominated manager for Formal Stage 1	Nominated manager at or above  Team Manager/ Team Leader or equivalent for Formal Stage 1
	For Formal Stage 2 Meeting Manager that conducted the Formal Stage 1	For Formal Stage 2 Manager with authority to dismiss, ie Assistant/ Deputy Director, Service Unit Manager/ Director or equivalent

## 2. OUTLINE OF PROCEDURE

The procedure:

- Sets out two formal stages and a right of appeal
- Is usually preceded by informal action, and
- Provides for formal action in which:
  - managers may give formal warnings
  - Senior managers can dismiss
  - More senior managers still hear appeals against dismissal

## **2.1 STAGES OF PROCEDURE**

**INFORMAL ACTION –  
DISCUSS AND EXPLAIN THE PROPER STANDARD OF WORK REQUIRED  
REVIEW THE EMPLOYEE’S WORK PERFORMANCE  
SET TARGETS AND TIME LIMITS FOR IMPROVEMENT  
SET A REVIEW PERIOD**

**FORMAL STAGE-  
SET STANDARDS OF WORK REQUIRED  
REVIEW EMPLOYEE’S WORK PERFORMANCE  
OFFER REASONABLE SUPPORT, TRAINING AND MANAGEMENT  
GUIDANCE  
TELL THE EMPLOYEE WHAT FURTHER ACTION MAY BE TAKEN -  
INCLUDING THAT THE JOB MAY BE AT RISK (IF IT IS)**

**SECOND FORMAL STAGE –  
REVIEW THE EMPLOYEE’S WORK PERFORMANCE  
CONSIDER IF THE SET STANDARDS HAVE BEEN MET  
IF NOT, CONSIDER WHAT FURTHER ACTION TO TAKE, INCLUDING  
DISMISSAL (IF APPROPRIATE)**

**APPEAL –  
TO CONSIDER ANY VALID GROUNDS OF APPEAL RAISED BY THE  
EMPLOYEE  
DETERMINE THE OUTCOME OF THE APPEAL**

## **2.2 INFORMAL ACTION**

**The line manager will:**

Through the normal management processes –

(These include informal discussions and regular meetings to set work objectives and review progress, as well as more formal processes such as induction, probation, supervision meetings and training needs assessment)

- Discuss and explain the standards of work required
- Review the employee’s work performance
- Give reasons for the dissatisfaction with the employee’s work performance
- Give reasonable evidence of the way the employee is falling below the standards of work required
- Discuss any problems the employee is having
- Encourage the employee to improve
- Offer reasonable training, support and management guidance
- Clarify the work duties, performance standards and targets required
- Set reasonable time limits for the employee to achieve and maintain the required standard of work
- If necessary tell the employee that the next stage would be to move to a formal meeting if their work remains unsatisfactory

- Keep records and notes of the way in which they set standards and support the employee

(see paragraph 5.8 of attached guidance – options for action)

**The employee is entitled to:**

- Have the opportunity to give any explanation and to put their side of the matter giving reasons for their under performance
- Be treated sympathetically
- Be offered reasonable training, support and guidance
- Get regular feedback and progress
- Be told if and when their work reaches a satisfactory level

**The employee is responsible for:**

- Informing their manager of any facts which might be relevant to the matter
- Attending training, support and meetings to discuss work performance

## **2.3 FIRST FORMAL STAGE –**

### **Stage 1 Formal Capability Meeting (Performance)**

If:

- The manager has taken all the steps outlined in the Informal Stage (See Management Guidance Notes) and
- The Employee's work performance has not improved, or
- The improvement is inadequate

and after offers of support and advice the employee refuses to co-operate with, or is unable to respond to management efforts to enable the employee to achieve improvement in work performance, s/he should be asked in writing to attend a **Stage 1 Formal Capability meeting**.

Where the manager has ongoing concerns about the employee's capability but a formal Stage 1 Capability meeting has not been called, the manager must consider:

- on completion of each of the employee's annual appraisals held under the Council's Employee Performance and Development Scheme and
- on completion of each of the six-monthly review meetings held under that Scheme

whether that meeting should be convened.

**The manager convening the meeting will:**

- Write to the employee giving normally 10 working days notice of the meeting (unless a lesser notice period is agreed with the employee)
- In that letter tell the employee they are required to submit any documents they wish to present at the meeting and the names of any

witnesses s/he intends to call to the manager at least 3 working days before the meeting.

**The manager conducting the meeting will :**

- Meet formally with the employee in a **Stage 1 Capability Meeting**
- Set standards of work required and explain those standards
- Review the employee's work performance
- Give/seek reasonable evidence of the way the employee is falling below the standards required
- Discuss any problems the employee is having
- Offer reasonable training, support and guidance
- Set reasonable monitoring time limits for the employee to achieve and maintain the proper standards of work
- Set a review period
- Tell the employee what further action may be taken if they do not meet and maintain the required standards of work
- Consider the issues and, if appropriate issue a formal warning
- Explore any other reasonable options such as transfer, redeployment or demotion, with the employee's agreement
- Make and keep a written record of the issues discussed, decisions made, any warning given, timescales for improvement etc.

(see paragraph 5.16 of attached guidance – options for action)

**The employee is entitled to:**

- Reasonable notice of the meeting (normally 10 working days, unless a lesser notice period is agreed) in writing of
- The date, time and place of the meeting
- The purpose of the meeting and the issues to be discussed
- The name of the manager who will conduct the meeting.
- Rights to representation
- Receive supporting documents to be relied on by the manager convening the meeting at least 5 working days before the meeting
- Be told that a formal warning may be issued
- The opportunity to be represented by another Council worker, an official employed by a trade union or a certified trade union official (but not a paid/unpaid legal representative). A certified trade union official is one whom the trade union has reasonably certified in writing as having experience of, or having received training in, acting as a worker's companion\* at disciplinary or grievance hearings
- Postpone the meeting to another reasonable time within 5 working days after the original date- only if their representative will not be available at the time proposed.
- Give any explanation and put their side of the matter
- A letter confirming the issues considered, the decision and any warning given
- Regular feedback on progress
- Be told if and when their work reaches a satisfactory level

[\*The companion will be allowed to address the hearing in order to:

- Put the employee's case
- Sum up the employee's case

- Respond on the employee's behalf to any view expressed at the hearing

The companion has no right to answer questions on the employee's behalf or to address the hearing if the employee does not wish it or to prevent the employer from explaining their case.]

## **2.4 STAGE 2 - Formal Capability Meeting (Performance)**

- If the employee has not achieved the required performance level at the end of the review period, or,
- if it is clear during the monitoring period that the employee's performance will not reach the required standard by the end of the review period
- the line manager will decide in consultation with a Human Resources Adviser to progress to the next review stage by telling the employee in writing to attend a Stage 2 Formal Capability meeting.

### **The manager convening the meeting will:**

- Write to the employee giving normally 10 working days notice of the meeting (unless a lesser notice period is agreed with the employee)
- In that letter tell the employee they are required to submit any documents they wish to present at the meeting and the names of any witnesses s/he intends to call to the presenting manager at least 3 working days before the meeting.

### **The manager conducting the meeting will :-**

- Review the employee's performance
- Give/seek reasonable evidence of the way the employee is falling below the standard required
- Satisfy him/herself that a reasonable investigation has been carried out into any problems the employee is having
- Make a decision on whether the employee's performance is up to the right standard
- Determine a course of action that will take into account
- The needs of the Council's business
- The interests of the employee (where possible)
- Make and keep a written record of the decisions made and give a copy to the employee.

(see paragraph 5.21 of attached guidance – options for action)

### **The employee is entitled to:**

- Reasonable notice (normally 10 working days, unless a lesser notice period is agreed) in writing of
- The date, time and place of the meeting
- The purpose of the meeting and the issues to be discussed
- The name of the manager who will conduct the meeting
- Rights of representation
- Receive supporting documents to be relied on by the manager convening the meeting at least 5 working days before the meeting

- Know that a possible outcome of the meeting is dismissal from the Council's service
- the opportunity to be represented by another Council worker, an official employed by a trade union or (as defined earlier) a certified trade union official (but not a paid/unpaid legal representative).
- Postpone the meeting to another reasonable time within 5 working days after the original date – only if their representative will not be available at the time proposed
- Give any explanation and put their side of the matter
- A letter (normally within 5 working days of the date of the meeting) confirming the issues considered, the decision and any right of appeal against dismissal
- Notice or pay in lieu of notice if dismissed

## **2.5 SWIFT DISMISSAL**

There may be exceptional circumstances that justify dismissal without following a lengthy procedure. This may be appropriate, for example:

- Where the employee's lack of performance places the Council at severe risk, (i.e. health and safety defect, serious financial consequences or serious risk to clients) if there is a repeat of the incompetence.
- Where in some rare and extreme cases involving irredeemable incapability or inadequacy or intransigence on the employee's part, the circumstances are such that a warning is unnecessary e.g. where the employee refuses to accept that there is a problem with their performance, and refuses to co-operate with attempts to achieve an improvement, or where the employee is grossly incompetent.

Management would in such circumstances consider whether to proceed directly to Stage 2 of this procedure. This may only be carried out where the management have undergone prior consultation with the Director of HR and Diversity, or with her authorised representative.

## **2.6 APPEAL MEETING**

The employee will have a right of appeal against dismissal to a member of management (the Appeal Meeting Manager) who will be normally immediately senior to the manager who took the decision to dismiss. This manager will be at the level of seniority of at least Assistant Director or equivalent and will not have been previously involved, directly or indirectly with the case. Normally the manager who heard the Stage 2 Capability Meeting will present the management case at the appeal meeting. The appeal must be lodged with the Appeal Meeting manager within 10 working days of the employee receiving the letter confirming the dismissal decision.

The appeal must be made in writing and must clearly and specifically state in detail the ground or grounds for appeal which must fall within one or more of the following categories:-

**Procedure** – there was a procedural irregularity which had a material effect on the decision.

**The facts of the case** - The Manager hearing the Stage 2 Capability Meeting came to a conclusion on a material point of fact that no reasonable person could have come to.

**Sanction** - The decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable person.

**New Evidence** - There is evidence that the employee wishes to introduce for the first time at the appeal which could not reasonably have been raised at the Stage 2 Capability Meeting, and the absence of which had a material effect on the dismissal decision.

- No right of appeal will be allowed where the employee's letter of appeal does not meet these requirements. The presenting manager will arrange for the appeal to be heard as soon as practicably possible.
- The appeal meeting will not constitute a full re-hearing of the case. It will only address the specific grounds of appeal set out in the employee's letter of appeal. The Appeal Meeting Manager can refuse to consider any new evidence if s/he decides it is unreasonable for it to be raised for the first time at the appeal.
- The presenting manager and the employee will provide each other and the Appeal Meeting Manager with any documents to be used by them and the names of any witnesses to be called by them by the third working day before the appeal meeting.

**The Appeal Meeting manager will:**

- Conduct the meeting ensuring good order and natural justice
- Decide any disputes about procedure
- Consider the employee's grounds of appeal
- If need be change the decision on the facts of the case or reduce the severity of the management action (or both)
- Confirm the decision in writing

**The employee is entitled to:**

- Reasonable notice (normally 10 working days, unless a lesser notice period is agreed) in writing of the date, time and place of the meeting and of rights to representation
- The opportunity to be represented by another council worker, an official employed by a trade union or (as defined earlier) a certified trade union official (but not a paid/unpaid legal representative).
- Postpone the meeting to another reasonable time within 5 working days after the original date- if their representative will not be available at the time proposed
- Put the grounds of appeal and bring evidence relevant to them
- Hear and question the management response
- A letter confirming the issues discussed and the decisions made



## **2.7 INTERPRETATION OF PROCEDURE**

**Any disagreement between management and the employee concerning the interpretation of this procedure may be referred to the Director of Human Resources and Diversity or to his/her delegated representative whose decision shall be final.**

## **MANAGEMENT GUIDANCE NOTES -**

### **MANAGING POOR WORK PERFORMANCE**

#### **1. THE DISTINCTION BETWEEN INCAPABILITY AND MISCONDUCT**

1.1 Capability is defined by reference to skill or aptitude. This will cover matters such as incompetence, incapability, poor performance/work standards, inability, inflexibility or lack of adaptability, poor attitude and an employee's general unsuitability for their current employment. This might also apply to personality clashes between the employee and other employees or inability to work as part of a team, provided this adversely affects the employee's work performance or the performance of the team.

1.2 Misconduct is where an employee is negligent, careless or commits other wilful acts that result in the breach of a disciplinary rule.

1.3 You should therefore use this procedure if the employee's capability is in question and use the disciplinary procedure where the employee's conduct is in question. If it is not clear whether the under-performance is covered by misconduct or capability you should take advice from a Human Resources Advisor.

#### **2. PREVENTING CAPABILITY PROBLEMS**

2.1 The successful management of performance relies on the following good management practices and will help you to improve the performance of individuals and teams. Managers should keep records of times when these issues are raised and discussed, as reference may need to be made to them if an employee fails to meet the standards of their job.

- The recruitment and promotion of the right people, i.e. those with the required skills, competencies, knowledge and abilities to do the job, or those who can be trained to reach the desired standards of performance
- This will require you to determine the appropriate selection methods based on a clear and accurate job description and a person specification as set out in the Council's recruitment procedures
- When employment begins, you must explain to the employee the standards of work required and the consequences of failure to meet them.
- The use of a probationary period, during which time you as the manager will be required to provide training, supervision, assessment, appraisal and guidance to the employee. The employee should be advised of the consequences of an unsuccessful probationary assessment, i.e. dismissal. For further advice see HR Guidance on Probationary Service.
- Providing a planned induction programme to suit the needs of the employee and to communicate the Council's values and standards and how staff are expected to apply them.
- Providing regular supervision and appraisal to set and manage performance standards and targets. These should be clear, measurable and realistic.

- Providing support, development and training to suit the individual needs of the employee in line with the Unit Training Plan.
- Providing appropriate training and support to employees who have recently been promoted. Also where new working methods are introduced adequate training and time should be given to allow the employee to adapt.
- Providing regular communication on service and unit level matters that are likely to aid overall knowledge and proficiency in the post.
- Providing team briefings that should also give the employee an opportunity to put forward their views.
- Involving staff in the development of service/unit plans

In any of the above processes ensure that staff are treated consistently and fairly.

### **3. SETTING PERFORMANCE STANDARDS AND TARGETS**

3.1 In any fair process of performance management you must as the Manager discuss and seek to agree with the employee the performance standards and targets required. These should be applied fairly and consistently.

3.2 These should be realistic and measurable. Where appropriate break down long-term objectives into achievable short-term objectives, making clear the long-term objectives. Targets should be specific and state a clear time scale for achievement. The performance standards and targets should be fully explained and if possible agreed with the employee.

3.3 Where standards are raised or expectations changed, employees should be made aware of this and offered help and support as necessary, as well as a reasonable period of time in which to come up to meet the new requirements.

3.4 Where an employee's duties have changed and s/he no longer has the skills necessary for the job, you as the manager should consider whether the situation could properly be treated as a redundancy matter rather than a capability issue. If the need for the employee to do his/her original job has ceased or diminished, efforts can be made to seek to find alternative employment for the employee.

### **4. EVIDENCE OF POOR WORK PERFORMANCE**

4.1 It will be necessary for you as the manager to identify the factors that lead to the conclusion that the employee is under-performing. This will include:

- Factual evidence relating to the standard of work and repeated inability to meet work deadlines
- Complaints or criticism of the employee's work from colleagues, other employees, supervisors or managers, agencies or members of the public
- (any such complaints should be investigated and not taken at face value)
- Your own observation of the employee indicating dissatisfaction

## 5. INFORMAL PROCESS

5.1 The Council's Employee Performance and Development Scheme specifies that there is the expectation that line managers will hold regular one to one supervision meetings with employees they manage directly to discuss performance and progress and deal with any issues that arise. Where a manager assesses that an employee is under-performing he/she should bring this to the attention of the employee at an early stage at such a meeting. The reasons for the dissatisfaction with the employee's performance and how the employee is falling short of the requirements of the job should be explained to the employee. Where failure relates to specific performance standards and targets that have been set these should be stated. Where the employee has a communication disability or where the employee's first language is not English it may be necessary for the manager to make use of an appropriate interpreter.

5.2 As genuine incapability is not misconduct, the employee should be treated sympathetically. The employee should be given an opportunity to put forward the reasons for their under-performance in an attempt by the manager to discover the true reason.

5.3 As the manager you should also consider whether any shortfall in performance is due to unreasonable expectations or lack of proper explanation, a tolerance of low standards and/or inadequate training/support on your part as the manager. You should ask the employee whether they agree with your assessment of under-performance and whether they will co-operate with constructive attempts and suggestions to help improve their performance.

5.4 Where the employee agrees that there is a problem with their performance and/or agrees to co-operate with your suggestions for improvement, as the manager your primary aim should be to encourage the employee to improve their performance to an acceptable level taking into account the reasons given by the employee for their under-performance. This may include consideration of other matters taking place in and outside the workplace that might affect the employee's performance:

- New work methods
- The 'over-promotion' of an employee
- Difficult personal problems, such as divorce or death in the family, domestic violence
- Workplace problems such as discrimination, sexual harassment, victimisation or bullying
- any other matters outside the employee's control which affect work

5.5 In accordance with the Disability Discrimination Act 1995, if the employee has a disability, you as the manager must give due regard to any problems that have developed because of the employee's disability. 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. To improve it may be necessary to consider making reasonable adjustments relating to equipment, work allocation, work environment and the provision of extra support. Managers need to be aware of the importance of maintaining objectivity and not to discriminate inadvertently against any employee with a disability.

5.6 Alternatively, the employee may be newly disabled and this has affected their work performance. Again the provision of reasonable adjustments should be given full consideration. Managers are advised to consult with the Occupational Health Service in such circumstances.

5.7 Where the poor work performance is not related to any disadvantage caused by a person's disability, the employee is subject to all the provisions of this procedure in the normal way.

### 5.8 Options for action – informal stage

- Measures to lessen the impact on work performance of temporary domestic difficulties, i.e. permanent or temporary adjustment of hours, duties or workload, if these options are feasible within the demands of the service. For assistance with more specialist issues such as alcohol problems or drug abuse consult a Human Resources Advisor for advice and assistance.
- Clarification of duties, performance standards and targets required
- Setting specific work outcomes/deadlines/targets for improvement

5.9 As the manager you should warn the employee of the consequences of failure to meet and maintain the standards following an appropriate monitoring period, i.e. possible referral to the formal Incapability Procedure. The employee should also be warned that referral to the formal Incapability Procedure may take place before the end of the monitoring period if it is clear that the employee's performance will not reach the required standard by the end of the monitoring period. This monitoring period should bear in mind the nature and complexity of the employee's duties and allow a reasonable amount of time for improvement to be achieved following appropriate training and support. If possible, the time scale should be agreed with the employee. The monitoring period should normally not be more than three months in length and may be shorter than this in appropriate cases. It should not be unduly prolonged by the adoption of any measures taken to assist the employee to improve his/her performance.

5.10 Make a record of this discussion and what has been agreed and give a copy to the employee. This note should repeat the standards expected, the time scale required for achievement and arrangements for monitoring and review of their achievement. This note is not to be kept on the employee's personal file but should be kept on a supervision or appraisal file as appropriate.

5.11 If you intend at a discussion to warn the employee that there may be a referral to the formal Capability Procedure, the employee should be allowed on request made to be accompanied by a trade union representative/official or a work colleague. Such a request can be refused where the manager has no intention of giving the employee such a warning at the discussion.

5.12 Importantly, as the Manager, you should also provide the following support as a means of encouraging the employee to improve their work performance.

#### 5.12.1 Training

The provision of training may be necessary to assist the employee to improve their work performance. Any such training would need to be appropriate and adequate, i.e. relate to the performance standards and targets set. The need for further training is likely to be particularly relevant where; for example, an employee is promoted to a managerial position or when there is a significant change in the content for the level of the job. A record should be made of the employee's response to the offer of training.

#### 5.12.2 Supervision and support

The employee should be offered extra support by way of additional direct supervision, coaching in the area of work concerned, advice, encouragement

and instruction. This would be more effective if provided by someone who is skilled in the area of work. It will then be possible for the employee to use that person as a good example against whom to compare their own performance.

### 5.12.3 Monitoring and Review

As the manager you should continue to monitor and assess the employee's performance as objectively as possible and as frequently as appropriate, keeping a record of this.

5.13 Where, following subsequent monitoring and review, the employee achieves the standards required, you should communicate this in writing to the employee. The employee should also be advised in writing that you will continue to monitor their performance alongside that of other employees as part of the normal management process and that if the employee's performance in future falls below the required standard a formal Capability Meeting may be held under Stage 1.

## ***The purpose of a Stage One – Formal Capability meeting***

5.14 The purpose of the meeting will be to:

- allow the Meeting Manager the opportunity to discuss formally with the employee the satisfactory standards of work performance required
- put forward information relating to the employee's performance that has led the manager to make the assessment that the employee is under-performing, including matters discussed and documented at supervision and appraisal meetings. Reference should also be made to any evidence of under performance relating to failure to meet performance standards/targets and complaints received.
- explain the effect of the employee's under-performance on the service
- put forward information relating to support, supervision and training that has
- been provided at the informal stage and the effect on performance since
- allow the employee an opportunity to give any reasons for their poor performance or to comment on their work
- allow the Meeting Manager and the employee to explore and if appropriate seek to agree options for further support and, where applicable, training in order to improve performance standards/targets to the level required
- allow the Meeting Manager and the employee to explore and if appropriate seek to agree any other options available e.g. the provision of reasonable adjustments if the employee's under-performance arises from the employee having become disabled or from a worsening of the effects of his/her disability; redeployment; demotion.
- set a review date giving the employee a reasonable time scale for improvement, or to show how they are capable of performing all the duties of the job. The review date should normally not be more than three months from the date of the meeting. The Meeting Manager will seek to agree the review date with the employee.
- explain that the employee's performance will be monitored throughout the review period and if the work performance does not improve or if any

improvement is not maintained, then further formal action may follow i.e. the convening of a formal Stage 2 Capability meeting. It should also be explained that the employee's future employment is at risk, as one possible outcome of a formal Stage 2 Capability meeting is dismissal.

**The procedure for the First Formal Capability meeting can include:**

**The manager's presentation that should set out:**

- the standards and targets required and how this was communicated/explained
- the way the employee is failing to meet them (documented by records)
- any reasons given by the employee for their under performance and any other measures taken by the manager to assist
- the training and support offered and the effect on subsequent performance
- the time already given for the employee to improve

Questions for clarification of the manager's case by the employee or their representative and (if applicable) by the Meeting Manager

**The employee's response that should set out:**

- their view on the issues presented by the manager
- any explanation they wish to offer
- any relevant problems that they are having

Questions for clarification of the employee's case by the manager and (if applicable) by the Meeting Manager

Suggestions from the employee, the manager and (if applicable) the Meeting Manager of the scope for:

- further training, support or coaching
- other options proposed and agreed for assistance
- time scales for improvement
- other options which may be available (e.g. redeployment to a lower grade)

**The Meeting Manager should adjourn the meeting to consider the issue.**

**The meeting should be reconvened to allow the Meeting Manager to:**

- give a brief summary of the evidence and improvement necessary
- state the Meeting Manager's decision on the course of action including
- actions to be taken
- the time scale for improvement and the review date
- the consequences of failing, by the end of the review period, to achieve the level of performance specified

The time scale for improvement should allow a reasonable amount of time for improvement to be achieved following any additional support and training as appropriate. This will depend on the nature and complexity of the work and how long it takes to complete any training and other measures adopted. It should normally not be more than three months from the date of the meeting and may in appropriate cases be a shorter period. However, if lower standards have been tolerated for some time it may be justified to allow more than three months for improvement. The timescale for improvement in this event should not exceed six months. SUCH AN EXTENSION WILL ONLY BE APPROPRIATE IN VERY EXCEPTIONAL CIRCUMSTANCES. The time scale for improvement should not be unduly prolonged by the adoption of any of the options for action listed below.

5.15.1 The meeting will be a less adversarial process compared to that of disciplinary hearings. The manager will need to be clear and specific about the employee's lack of capability and give reasonable evidence of this. This will include making references as appropriate to the employee's work, agreed targets, supervision notes, appraisal records, letters and memos to staff, the job description and accepted professional standards. The Meeting Manager will need to be satisfied that a reasonable investigation into the reasons for the employee's under performance has been carried out and that reasonable evidence of this has been communicated to the employee before coming to a decision.

5.15.2 The Meeting Manager should consider in particular, an objective comparison with other members of staff in a similar position, the employee's predecessors or reasonably objective targets.

5.15.3 The Meeting Manager should be assisted at the meeting by a Human Resources Adviser or a Legal Services representative. Detailed notes should be taken at the meeting.

5.15.4 Where the employee holds a senior management post as mentioned in Standing Order 78(b) or (o) then should the Meeting Manager propose to dismiss the employee the process set out in Standing Order 80 will have to be followed before notice of dismissal can be given to the employee.

#### 5.16 **Options for action:**

The following are the options for action as an outcome from the Capability meeting.

- further training and support
- any other support as a consequence of personal or work issues affecting performance
- reasonable adjustments to the work, working environment or the way the work is organised
- reasonable adjustments required to the work, working environment or the way the work is organised as a result of an employee's disability
- seeking redeployment of the employee to another post (where the employee is judged potentially capable of carrying out another job at the current or lower grade and they agree). If the employee accepts an offer of redeployment to a lower graded post the salary will not be protected, the rate of pay and other conditions being those applicable to the new post. Any offer of alternative employment should be made in writing, explaining why the offer is being made and the consequences of refusing the offer i.e. that the formal Capability process will continue. The employee should be given at least 7 working days to consider the offer and discuss it with their representative.
- demotion (where the employee is not thought capable of working on the current grade and the employee agrees). This may be appropriate where the employee has been promoted but has a history of satisfactory service at a lower grade.
- the offer of careers counselling where despite appropriate training and support the employee feels that they are not coping with the full parameters of the job
- referral to the Council's Occupational Health Service for counselling



5.17 After the meeting the Meeting Manager should confirm in writing to the employee the action/s to be taken. This should state:

- The level of improvement necessary, the required standard that must be achieved and the timescale for improvement.
- The support (e.g. additional supervision) and training, where appropriate, that will be available to help the employee reach the required level.
- Any other action/s from the list of options for actions set out in paragraph 5.16 that will be taken by the manager or the employee
- The consequences of failing to improve performance by the end of the review period to the required standard, i.e. the possibility of the convening of a formal Stage 2 Incapability meeting, one possible outcome of which is dismissal.

It should also be stated that a formal Stage 2 Capability meeting may be convened before the end of the review period if it is clear that the employee's performance will not reach the required standard by the end of the review period e.g. because during the review period no improvement is taking place or the employee's performance deteriorates.

5.18 The employee should be kept informed of their progress throughout the review period. The employee should be advised in writing if their work performance has not improved or that it has deteriorated to an unacceptable level and what action will be taken. However, if the employee achieves the required performance standards by the end of the review period they should be advised of this in writing and encouraged to maintain the level of improvement. They should also be advised in writing that no further formal processes would follow provided they maintain the level of improvement. They should be informed in writing that the Manager will continue to monitor their performance alongside that of other employees as part of the normal management process, that if their performance in the following 12 months falls below the required standard a formal Incapability Meeting may be held under Stage 1 or Stage 2 and if a formal Stage 2 Capability meeting is held one possible outcome may be dismissal.

#### **Purpose and Procedure of Stage Two Formal Capability meeting (Performance)**

5.19 The purpose of the meeting will be as set out in Stage 1 except that setting a review date will be optional, not mandatory and that in addition the meeting will allow the Meeting Manager the opportunity to consider whether the employee should be dismissed. The procedure to be followed is set out below:

The Meeting Manager who will be assisted by a Human Resources Adviser or a Legal Services representative will open the meeting by explaining the reasons why the meeting has been arranged, summarise the order of proceedings and answer any issues with regard to procedure.

The presenting manager/ Meeting Manager will submit his/her case and call upon any witnesses to give evidence and/or produce any necessary documentary evidence in support of the case. The manager's presentation should set out: -

- the standards and targets required and how this was communicated/ explained
- the way the employee failed to meet them (documented by records)

- any reasons given by the employee for his/her under performance and any other measures taken by the employee's line manager to assist
- the training and support offered and the effect (if any) on subsequent performance
- the time already given for the employee to improve
- details of the outcome of the Stage 1 Capability Meeting
- (if applicable) recommendations concerning which of the options available to the Meeting Manager should be adopted (including any recommendation to dismiss) and the reasons for the recommendations.

There will then be the opportunity for questions from the employee/representative, the Meeting Manager and the Human Resources / Legal Services adviser (in that order) of the presenting manager (if any) and any witnesses (including any questions on the documentation presented).

Any witnesses shall withdraw after giving evidence and answering any questions put to them.

The employee/ representative will submit his/her case and call upon any witnesses to give evidence and/or produce any necessary documentary evidence in support of his/ her case. The employee's response should set out:

- their view on the issues presented by the manager
- any explanation they wish to offer
- any relevant problems they are having
- suggestions concerning which (if any) of options available to the Meeting Manager should be adopted and the reasons for the suggestions

There will then be the opportunity for questions from the presenting manager (if any), the Meeting Manager and the Human Resources/Legal Services adviser (in that order) of the employee, the employee's representative and any witnesses (including any questions on the documentation presented).

Any witnesses shall withdraw after giving evidence and answering any questions put to them.

The presenting manager (if any) and the employee/ representative may sum up their cases if they so wish. The employee has the right to sum up last.

The presenting manager (if any) and the employee/representative will withdraw while the Meeting Manager considers the case. If any recall is necessary to clarify points of uncertainty, both parties will be asked to return. In addition the Meeting Manager may require that other witnesses/ evidence should be called/produced in order to ensure that all the necessary facts can be considered before making a decision on the case. S/he may decide to adjourn the hearing to allow this if necessary. The options available to the Meeting Manager are set out in paragraph 5.21.

Once the Meeting Manager has made a decision the parties should be recalled and informed of the outcome.

## 5.20 The Meeting Manager will:

- Review the decisions of the previous capability meeting
- Consider whether the employee has achieved the standards required following the review period or, where the meeting is held before the end of the review period, whether it is clear that the employee will not reach the required standards by the end of the review period.
- Consider what additional support and, where appropriate, training has been provided and the effect on the employee's performance
- Give the employee or their representative an opportunity to put forward their view on the information presented and any issues (personal or work) affecting the employee's performance
- Consider what solution is appropriate (e.g. additional support and/or training)
- The Meeting Manager will need to satisfy himself/herself during the meeting that a reasonable investigation has been carried out into the reasons for the employee's under-performance before coming to a decision.

## 5.21 Options for action

These will include any of the options listed at Stage 1 as well as:

- A further review period to determine whether the employee can meet the standards of performance set by management. Where this occurs, the employee will be informed that if s/he fails to reach a satisfactory level of performance by the end of the review period or if it is clear during the review period that his/her performance will not reach the required standards by the end of the review period then this will lead to the reconvening of the Stage 2 Capability Meeting, at which the Meeting Manager will consider dismissing the employee. A second review period may be particularly appropriate where the Meeting Manager feels the employee has not been given sufficiently long to improve and the employee is likely to meet the standards of performance set by management during the further review period. The further review period should normally not be more than two months from the date of the meeting.

The Meeting Manager will seek to agree the length of the review period with the employee.

- Dismissal on the grounds of capability

The options of finding alternative employment/demotion/offering careers counselling for the employee should not be considered at this stage as alternatives to dismissal but rather as options that may be pursued if a decision is taken to dismiss. These options can be carried out during the employee's notice period. Where the redeployment of the employee to another post is being sought the employee should be given at least one month's notice to ensure a redeployment period of reasonable length.

## **HEARING AN APPEAL:**

5.22 The Chair of the meeting (the Appeal Meeting Manager) who will be assisted by a Human Resources Adviser or Legal Services representative will introduce all

parties and state the purpose of the appeal meeting. S/he will then summarise the order of the proceedings and answer any issues with regard to procedure.

2. The appellant and/or his/her representative may present their case based on the grounds specified when submitting the appeal. At this stage the appellant will be entitled to refer to documentation and call any witnesses considered by the Chair to be necessary in connection with the grounds for appeal.

3. The management representative, the Chair/ Human Resources/ Legal Services representative (in that order) may ask questions of the appellant and the appellant's representative and any witnesses (including any questions on the documentation presented). Any witnesses shall withdraw after giving evidence and answering any questions put to them.

4. The management representative will then answer the appellant's presentation, call witnesses considered by the Chair to be necessary in connection with the grounds of appeal and use any relevant documents. Any witnesses shall withdraw after giving evidence and answering any questions put to them.

5. The appellant and/or his or her representative, the Chair/ Human Resources/Legal Services representative (in that order) may ask questions of the management representative and any witnesses (including any questions on the documentation presented).

6. The appellant and/or his or her representative will summarise their appeal case.

7. The management representative will summarise their appeal case.

8. The parties to the case will be asked by the Chair to withdraw.

9. The Chair will deliberate and come to a decision.

10. The parties will be recalled and be given the Chair's decision in the matter.

11. The appeal decision and the reasons for it will be confirmed in writing to the appellant and the management representative by the Chair of the appeal hearing normally within 5 working days of the date of the meeting.

12. Notes must be taken of the appeal meeting.

5.23 The Appeal Meeting Manager will have the authority to confirm the dismissal decision or to overturn it. In the latter event reinstatement or re-engagement with continuous service will apply and s/he shall have the authority to decide on an alternative option to dismissal that may include those open to the manager conducting the Formal Stage 2 Capability Meeting. Where the Appeal Meeting Manager decides to uphold the appeal in the case of procedural flaw or new evidence s/he will have the discretion to refer the case back for a Formal Stage 2 Capability Meeting or to conduct such a meeting him/herself. Where the case is referred back for a Formal Stage 2 Capability Meeting s/he will decide, depending on the circumstances, whether that meeting should be conducted by the same manager who originally conducted the meeting or by a different manager.

#### **NON-ATTENDANCE OF THE EMPLOYEE AT FORMAL INCAPABILITY OR APPEAL MEETINGS**

5.24 Should the employee fail to attend a meeting the manager conducting the meeting will have the discretion to proceed with the meeting if no reason is given for the absence or the reason given is considered by the manager to be unsatisfactory

5.25 If the employee fails to attend the meeting on the grounds of sickness consideration should be given to proceeding with the meeting in the employee's absence, provided that the employee has received written warning that this may happen and the meeting has been previously postponed on the grounds of the employee's non-attendance. The manager should ensure the employee is aware of the date and time of the revised date, remind him/her of the importance of attending and should if appropriate seek medical advice on whether the employee is fit to attend. Where the employee still cannot/does not attend the manager may judge it essential for the meeting to continue, in which case account should be made of submissions made on the employee's behalf by a representative in person or made by or on behalf of the employee in writing or by telephone.

# **CAPABILITY POLICY AND PROCEDURE FOR MANAGING POOR WORK PERFORMANCE**

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