

# Capability Policy

## 1.0 Introduction – Policy Statement

1.1 Situations can occur where an employee's overall performance is below acceptable standards due to a genuine lack of capability or competence rather than deliberate non-compliance with the standards required. While such a situation would require to be addressed as the employee may be trying hard to do their job well it would be inappropriate to apply disciplinary procedures.

1.2 Such situations can arise because of:-

- ❖ organisational change
- ❖ change of job content (perhaps as a result of changes to service provision or new technology)
- ❖ an employee having been redeployed or promoted
- ❖ lack of training
- ❖ personal factors affecting the individual's performance
- ❖ ill health or development of a disability
- ❖ lack of understanding of remit

The Capability Procedure will deal with those cases where an employee is lacking in some area of knowledge, skill or ability and as a result is unable to carry out their duties to the required standard.

The Capability Procedure is distinct from the Employee Review and Development Programmes and should not be used as a substitute. The procedures, however, do not exist in isolation and can be used in parallel.

Where role redesign is identified as the potential cause of incapability, the case will be carefully considered by the manager with advice from Human Resources to determine whether action under the redeployment or redundancy procedures is appropriate rather than under the Capability Procedure.

If it appears that the unacceptable performance is due to a lack of effort or wilful misconduct the Disciplinary Procedure may be invoked. In each case, the procedure involved will be made clear to the employee.

Employees will have a right to be represented at each stage of the formal Capability Procedure by a trade union representative or other representative of their own choosing.

### **The purpose of the Capability Procedure:**

The purpose of this procedure is to:

- ❖ . . . provide a fair and consistent procedure for dealing with capability problems (including those employees who have a disability, resulting from an injury or illness while employed by the Council)
- ❖ . . . assist employees to improve their performance and reach an acceptable standard wherever possible by providing support and training
- ❖ . . . ensure employees are aware of the standards expected of them
- ❖ . . . assist the organisation to operate effectively.

# Capability Procedure

## 3.0 Application of the Procedure

### 3.1 Informal Process

The Capability Procedure should not prevent the normal line management process of addressing performance issues through providing support and guidance in order to achieve improvement.

Line managers should maintain records of significant performance issues, assistance and training given and reviews of performance in all cases should formal action be required. The employee is entitled to have a copy of such records.

Where the above does not lead to a satisfactory improvement, the formal Capability Procedure will be instigated.

## 4.0 Formal Procedure

**Representation** - At all stages of the formal procedure including appeals an employee will be entitled to have a representative present. It will be made clear in advance to the employee and representative that the Capability Procedure rather than Disciplinary Procedure is being used.

**Appeals** – An employee will have a right of appeal at all stages of the formal procedure. There will be no delay in implementing management decisions pending an appeal, although they may subsequently be amended as a result of the appeal hearing.

### 4.1 Stage 1 – Formal Capability Meeting

Where an employee is failing to perform to an acceptable standard despite guidance and assistance at the informal stage, a formal capability meeting will be arranged by the line manager. The employee should be given written notice of the meeting which will include:-

- a) the fact that the matter is being referred to Stage 1 of the Capability Procedure – a formal capability meeting
- b) clear details of the shortfall in performance and supporting documentation
- c) details of any informal action taken so far
- d) the right to representation
- e) details of where and when the meeting will take place

Notice of the meeting should normally be given at least five working days in advance. Where an employee requests additional time for the purposes of having a representative available, a reasonable extension should be granted.

### **Procedure to follow at meeting**

During the meeting the employee should be clearly told of the shortfall in performance and precisely the performance standard expected. The employee should be advised of the consequences of not achieving the standard which may ultimately be redeployment to an alternative post or termination of employment. The employee must be given the opportunity to answer the points raised and to explain any difficulties they might be having. If they state that performance problems could be due to ill health or a long term condition which may be covered under the Disability Discrimination Act (DDA) a referral should be made to Occupational Health via Human Resources. Where a condition is covered under the DDA reasonable adjustments will need to be made and this should be discussed with your appropriate HR Adviser.

An action plan should be discussed and drawn up detailing the standards required and method of achieving improvement, if appropriate. Methods of improvement should be discussed and may include training, working under close supervision or agreeing changes in duties on a temporary basis. A reasonable timescale for improvement and review should be set depending on individual circumstances. During this period mechanisms for support and monitoring must be put in place by the line manager.

Conclusions from the meeting, including the action plan, and review date will be formally recorded in writing and a copy given to the employee within 5 working days of the meeting. The employee will be given details of the right to appeal.

If the employee accepts that he / she cannot fulfil the requirements of the job, alternative options should be discussed. These may include a permanent redefinition of duties on an appropriate grade, redeployment or mutual termination.

## **4.2 Appeal Against Decision at Stage 1**

An appeal against the outcome of Stage 1 should be lodged within 10 working days of receipt of the capability review letter to the Service Manager who will arrange to hold an appeal hearing within 20 working days of receipt of the appeal letter. The appeal will be heard by the Service Manager or nominated officer.

### **Procedure at appeal**

The employee will present his / her case, including the reason for the appeal. The manager will then present his / her information and justification for taking such action. Both the manager and employee will have the opportunity to ask questions. At the conclusion of the hearing or following an adjournment to deliberate, the Chair will indicate his / her decision to the member of staff and confirm this in writing to the employee within 5 working days.

## **4.3 Satisfactory Standard of Performance Achieved Prior to Stage 2 Review**

If a satisfactory standard of performance is achieved a reasonable time before the scheduled formal review meeting, a meeting should be convened and the employee advised that a satisfactory standard of performance has been achieved and is expected to be maintained. This will be formally recorded and a copy given to the employee. In order to ensure that a satisfactory standard of performance is maintained there will be a period of monitoring of 3 months.

If a satisfactory standard of performance is maintained during this 3 month period, the employee will be formally notified in writing and no further action will be taken.

If it is not maintained during the 3 month period, the employee will be formally notified of this in writing and the procedure will be taken to the next stage.

#### **4.4 Stage 2 – Formal Review Meeting**

The employee should again be given written notice of the formal review meeting by his / her line manager, which will include:-

- a) the procedure and stage being used
- b) the intention to review the action plan
- c) the right to representation
- d) details of where and when the meeting will take place

Notice of the meeting should normally be given at least five working days in advance. Where an employee requests additional time for the purposes of having a representative available, a reasonable extension should be granted.

##### **Procedure at Meeting**

##### **Satisfactory standard of performance achieved**

Following a review of the action plan, if the desired improvement has been achieved the employee should be advised that a satisfactory standard of performance has been achieved and is expected to be maintained. This must be formally recorded and a copy given to the employee. In order to ensure that a satisfactory standard of performance is maintained there will be a period of monitoring of 3 months.

If a satisfactory standard of performance is maintained during this 3 month period, the employee will be formally notified in writing and no further action will be taken

If it is not maintained during the 3 month period, the employee will be formally notified of this in writing and the procedure will be taken to the next stage.

##### **Satisfactory standard of performance not achieved**

If the required standard of performance is not achieved, the employee should be advised of the continued areas of under performance. Evidence should be available. The methods of improvement should be reviewed and additional or alternative methods considered. Again the employee should be given the opportunity to answer points raised or explain any problems.

It may be appropriate at this stage to again discuss alternative options including redeployment and in this case the redeployment procedure should be referred to. Formal notification should also be given that alternative options such as mutual termination and capability dismissal will be considered at the end of the next stage.

Following the formal review meeting a formal letter will be issued to the employee detailing the continued areas of under performance, expected improvement, further assistance to be given, timescales for achievement and consequences of non achievement.

#### **4.5 Appeal Against Decision at Stage 2**

An appeal against the decision at stage 2 should be lodged within 10 working days of receipt of the capability review letter to the Head of Service who will arrange to hold an appeal hearing within 20 working days of receipt of the appeal letter. The appeal hearing will be held by the Head of Service or nominated officer.

The appeal procedure detailed in Stage 1 Appeal should be followed.

## **4.6 Stage 3 – Review Meeting**

### **Satisfactory standard of performance achieved**

If the reviewing manager is satisfied that the required improvement has been achieved the manager should convene a meeting with the employee to advise of this and that a satisfactory standard of performance is expected to be maintained. This must be formally recorded and a copy given to the employee. In order to ensure that a satisfactory standard is maintained there will be a period of monitoring of 3 months.

If a satisfactory standard is maintained during this 3 month period, the employee will be formally notified in writing and no further action will be taken.

If it is not maintained during the 3 month period, the employee will be formally notified of this in writing and a formal meeting convened as detailed below.

### **Satisfactory standard of performance not achieved**

If the reviewing manager is not satisfied that the required improvement has been achieved, the employee should be given written notice, by the reviewing manager, to attend a review meeting which will include:-

- a) the procedure and stage being used
- b) the name of the manager chairing the meeting
- c) the intention to review the action plan
- d) the right to representation
- e) details of where and when the meeting will take place

Notice of the meeting should normally be given at least five working days in advance. Where an employee requests additional time for the purposes of having a representative available, a reasonable extension should be granted. The meeting should be conducted by the Service Director or Head of Service if not previously involved. Advisers from Human Resources and Legal Services should be in attendance at the meeting.

At this meeting the reviewing manager will clearly state continued areas of underperformance and the employee will be given the opportunity to answer the points raised. The Service Director or Head of Service will then make a decision. In exceptional circumstances, the Service Director or Head of Service may decide that an improvement in performance to an acceptable level may be achieved by extending the assistance offered and timescale allowed under the previous stage. Only one such extension can be agreed.

If it is decided that performance will not reach an acceptable level in the current post further consideration will be given to redeployment opportunities. The appropriate notice period will be given during which time redeployment opportunities will be investigated. If no suitable redeployment is available or the employee declines reasonable redeployment, contractual notice of dismissal on the grounds of capability will be given. The reasons for the dismissal, the last date of employment, any financial implications, e.g. Pay in lieu of notice, and to whom and within what time limit any appeal should be made will be confirmed to the employee in writing within five working days.

In exceptional circumstances where the case is complex and requires further investigation, the convenor may adjourn the meeting. The meeting shall be reconvened within 5 working days unless a longer adjournment is agreed by all parties involved.

### **Where an extended timescale is given**

Where it is agreed to allow one further period in which to improve, a final review date will be set and depending on the outcome the appropriate action within Stage 3 taken.

## **4.7 Stage 3 – Appeal**

An appeal against any decision at Stage 3 should be lodged within 10 working days of receipt of the final capability review letter. The appeal should be lodged with the Head of Human Resources who will arrange to hold an appeal hearing within 20 working days of receipt of the appeal letter.

### **Action short of dismissal**

In the case of a decision which is short of dismissal the appeal shall be heard by the Service Director if not involved in the original hearing. Representatives from Legal Services and Human Resources will attend.

At the conclusion of the appeals hearing the Service Director, shall indicate to the individual the decision of the hearing. The decision will be confirmed in writing, within 5 working days.

This stage ends the right of appeal within the Council's procedures.

### **Dismissal**

An appeal against dismissal shall be heard by the Appeals Committee of the Council. The appeal should be lodged with the Head of Human Resources by the member of staff in writing within 10 working days of receipt of the final capability review letter. The appeal will be heard within 30 working days of the submission of the appeal.

The Appeals Committee of the Council shall conduct the appeal in accordance with the Standing Orders of the Council and the relevant Code of Practice. The Committee will be advised by Human Resources and Legal Services. At the conclusion of the Appeals Committee Hearing, the Convenor of the Appeals Committee shall indicate the decision of the appeals committee to the individual. This decision will be confirmed in writing within 5 working days of the conclusion of the Appeals Committee by the Head of Human Resources. This shall be the final right of appeal within the Council's procedures.

Nothing in this procedure shall be in derogation of an individual's statutory rights.

## **5.0 Capability Procedure - Directors**

❖ . . . • In the event that a capability matter is raised concerning an Director, the Chief Executive will carry out the stages of the procedure.

❖ . . . • Where a formal capability meeting is considered necessary, the Chief Executive shall make arrangements to commence a formal meeting.

❖ . . . • The Chief Executive may request representatives of Human Resources and of Legal Services to attend to provide advice.

❖ . . . Any appeals against the decision would be heard by the Appeals Committee of the Council. Any such appeal will be heard in accordance with this procedure and the Standing Orders of the Council.

## **6.0 Capability Procedure – Chief Executive**

❖ . . . In the event that a capability matter is raised against the Chief Executive, the Head of Human Resources will make arrangements to progress the procedure, in line with the procedure agreed by the JNC for Chief Officials.