

AGENDA ITEM

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AGENDA ITEM 10

CENTRAL SCOTLAND VALUATION JOINT BOARD

Subject: CAPABILITY POLICY REPORT
Meeting: CENTRAL SCOTLAND VALUATION JOINT BOARD
Date: 28 JUNE 2019
**Author: PETE WILDMAN, ASSESSOR & ELECTORAL
REGISTRATION OFFICER**

1.0 INTRODUCTION

- 1.1 This report is seeking approval for an updated Capability Policy and Procedure
- 1.2 The Policy is based on the policy adopted by Clackmannanshire Council and we have worked with Human Resources at Clackmannanshire Council in its development.
- 1.3 The Board's Staff Consultation Forum were consulted on the new policy and procedure. No changes were proposed by the Forum

2.0 BACKGROUND

- 2.1 The Board's current Policy and Procedure were approved by the Board in September 2010.
- 2.2 It is good practice to review and where necessary amend policies to ensure that they remain current and fit for purpose.

3.0 REVISED CAPABILITY POLICY AND PROCEDURE

- 3.1 Copies of the proposed Capability Policy and Procedure are attached as Appendix 1 and 2 of this report.
- 3.2 The principle changes are
 - Separate approaches to Performance Related and Health Related Capability.
 - Clearer guidance on each stage.
 - Streamlined procedure to a two stage process.

4.0 RECOMMENDATION

- 4.1 I ask that the Board approves the new 'Capability Policy' and 'Capability Procedure'.**

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Assessor & ERO

Appendix 1 - Capability Policy
Appendix 2 – Capability Procedure

Appendix 1



CAPABILITY POLICY

SUPPORTING PEOPLE TO WORK

Date: June 2019

Version: Draft 0.4

Review Date:

Date approved:	
Date published:	
Document Type:	Policy
Document Status:	Draft
Author:	Jane Wandless

Revision History:

Version:	Date:	Author:	Changes:
0.1	13/12/2018	Jane Wandless	
0.2	19/02/2019	Jane Wandless	Minor changes from Feb MTM
0.3	13/03/2019	Jane Wandless	Reviewed by SCF, no changes proposed
0.4	28/06/2019	Jane Wandless	To CSVJB for approval

CAPABILITY POLICY

1.0 Policy Statement

- 1.1 Central Scotland Valuation Joint Board (CSVJB) is committed to developing and assisting employees to reach their performance and attendance potential thereby enhancing the services it provides to stakeholders. To this end CSVJB will ensure that standards are established, performance and attendance levels monitored and employees given training and support to meet such standards.
- 1.2 Equally all employees will have a responsibility to achieve and maintain a satisfactory standard of performance and attendance to carry out the required duties to the standard required.
- 1.3 All employees will be made aware of the performance and attendance standards that they are expected to deliver through a number of mechanisms including the job description, appraisals and employee/line manager meetings.

2.0 Scope

- 2.1 This policy applies to all employees of CSVJB in relation to the management of capability whether performance or health related.

- 2.2 Where unsatisfactory performance results from undue attention or neglect by employees, or failure to follow reasonable instructions, managers may consider the case as one of unsatisfactory conduct under the Disciplinary Policy.

3.0 Principles of the Policy

- 3.1 Ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues.
- 3.2 Ensure employees understand their roles and responsibilities and are aware of the standards expected of them.
- 3.3 Assist employees to improve their performance and reach an acceptable standard where possible through support and training.
- 3.4 Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees.
- 3.5 Provide a fair and consistent procedure for dealing with capability problems.

4.0 Representation

- 4.1 Employees have the right to be represented by a Trade Union representative or work colleague at any meetings held under Capability.

5.0 Monitoring & Review

- 5.1 Senior Management and Trade Union Representatives shall monitor the effectiveness of this policy on an ongoing basis.

Amendments will be made as and when deemed necessary and, where appropriate, after consultation with recognised trade unions.

DRAFT

Equality Impact Assessment

Policy Name	Capability Policy
Policy Lead	Jane Wandless
Equality Impact Assessment	
Full EQIA required	Yes <input type="checkbox"/> No* <input checked="" type="checkbox"/>
Date Full EQAI complete	
Date Approved	
Review Date	

Appendix 2



CAPABILITY PROCEDURE

SUPPORTING PEOPLE TO WORK

Date: June 2019

Version: Draft 0.4

Review Date: June 2020

Title:	Capability Procedure
Date Approved:	
Date Published:	
Version Number:	0.4
Document Type:	Procedure
Document Status:	Draft
Author:	Jane Wandless

Revision History:

Version:	Date:	Author:	Changes:
0.1	13/12/2018	Jane Wandless	
0.2	19/2/2019	Jane Wandless	Revised following Feb MT meeting
0.3	13/03/2019	Jane Wandless	Reviewed by SCF no changes proposed

0.4	28/06/2019	Jane Wandless	To VJB for approval
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CAPABILITY PROCEDURE

1.0 Introduction

- 1.1 This procedure should be read in conjunction with the Capability Policy.
- 1.2 Central Scotland Valuation Joint Board (CSVJB) is committed to developing and assisting employees to reach their performance and attendance potential thereby enhancing service quality and job satisfaction.
- 1.3 Staff and managers are jointly responsible for ensuring that satisfactory performance standards are maintained at all times, however CSVJB recognises that situations may occur where an employee fails to meet the requirements of their post.
- 1.4 This procedure is intended to be used for individual members of staff.
- 1.5 Capability can refer to an employee's inability to perform the work expected of them to a required standard as a result of lack of skills/aptitude or as a result of health issues. As such, CSVJB's procedure deals with these issues in two ways:
 - Capability as a result of poor performance (lack of skills/aptitude)
 - Capability relating to health reasons
- 1.6 CSVJB recognises that before an employee can be expected to reach appropriate standards of job performance the employee will have the necessary professional skills and qualifications. Appropriate training, guidance and support will have also been provided.
- 1.7 CSVJB will ensure that it meets its obligations under the Equality Act 2010.
- 1.8 A work performance issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner due to capability (willing but cannot), or as a result of

misconduct (can but will not). In cases of misconduct CSVJB's Disciplinary Policy and Procedure should be used instead.

2.0 Purpose

2.1 The purpose of this procedure is to ensure that there is a fair and consistent approach to the management of capability and to assist employees to meet acceptable standards of performance by:

- Ensuring all employees are aware of the standards expected of them.
- Assisting employees to improve their performance and reach an acceptable standard through support, guidance, coaching and training where issues of capability are identified.
- Adjustments where reasonable will be explored and put in place.
- Supporting employees with health related issues through Occupational Health support, counselling and any other appropriate means.
- Ensuring realistic timescales are set and reviewed.
- Providing managers with a step by step guide to provide a fair and consistent process for dealing with capability issues.
- Ensure compliance with obligations under the Equality Act 2010.

3.0 Representation

3.1 Employees will be entitled to be accompanied by a trade union representative or work colleague to any meetings convened as part of the Capability Procedure.

4.0 Appeals (Performance & Health Related)

- 4.1 An employee will have the right of appeal against any formal action taken against them under this procedure. If the employee wishes to appeal they must do so in writing (including by e-mail) to the Assessor within 10 working days of receipt of written confirmation of the decision.
- 4.2 The employee must outline one or more of the following reasons upon which they seek to appeal and provide the rationale/evidence in respect of this. The reasons for appeal may be:

- The procedure was not correctly followed.
- Not all evidence was considered.
- The sanction/decision was too severe.
- New evidence has come to light.
- Any other mitigating circumstances.
- All employees have the right of appeal against dismissal on the grounds of capability. Employees will only have the right of appeal against the decision to dismiss them they will have no other right of appeal against any other part of the process.
- An appeal against the outcome should be made in writing to the Assessor within 10 working days of receipt of the letter confirming the decision to dismiss.
- Once an appeal has been received, it will be heard by the appropriate Appeals Committee normally within 30 days of receipt of the appeal.

4.3 It is important to note that the Appeal Hearing is not a rehearing of the original case. Where the employee is seeking to rely on new evidence which was previously not available then he/she shall be permitted to call witnesses in support of this new information. Witnesses who attended the original Capability Hearing may not be required to attend as an Appeal is not a rehearing of the case unless they are considered relevant to support/refute the new evidence being submitted. Once an appeal has been received it will be heard by an appropriate Appeals Committee.

5.0 Failure to attend

5.1 Where an employee fails to attend a Capability Hearing, whether performance or Health Related, they will be given one further opportunity to attend. Should they fail to attend the second Hearing the chairperson of the Capability Hearing may then make a decision on the basis of the evidence available.

6.0 Capability Procedure – Statutory Depute Assessor

- 6.1 Where a capability matter is raised concerning a Statutory Depute Assessor, the Assessor will carry out stages of the procedure with support and guidance from Clackmannanshire Council Human Resources and Legal Services.
- 6.2 Where a Formal Capability Hearing is considered necessary this will be heard in accordance with s27 of the Local Government etc. (Scotland) Act 1994.
- 6.3 Any appeal that is placed by the Statutory Depute Assessor for termination of employment on the grounds of Capability will be heard in accordance with s27 of the Local Government etc. (Scotland) Act 1994.

7.0 Capability Procedure - Assessor

- 7.1 In the event that a capability matter is raised in regard to the Assessor, the HR Service Manager at Clackmannanshire Council will make arrangements to progress the procedure in line with the Statutory Orders of the Valuation Joint Board and relevant statutory considerations.
- 7.2 Where a Formal Capability Hearing is considered necessary this will be heard in accordance with s27 of the Local Government etc. (Scotland) Act 1994.
- 7.3 Any appeal that is placed by the Assessor for termination of employment on the grounds of Capability will be heard in accordance with s27 of the Local Government etc. (Scotland) Act 1994.

PERFORMANCE RELATED CAPABILITY

Section One – Unsatisfactory Performance

9.0 Informal Procedure

- 9.1 Where it is believed an employee is failing to perform to an acceptable standard their line manager should, in the first instance, meet with them to discuss the issue.
- 9.2 Managers should in normal circumstances be managing performance in various ways which can include 1:1s and appraisals. It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already and the below outlined informal measures have been exhausted as required.
- 9.3 The manager should take into consideration any mitigating circumstances impacting on individual performance and look at ways of addressing these.
- 9.4 The line manager should try and establish if there are any outside factors that could be impacting on performance including excessive workload, limited resources, ill health, change in management and the staff member's personal circumstances.
- 9.5 Where an employee advises that their poor performance may be due to their ill health an Occupational Health referral should be made. Should the manager be advised that poor performance is a result of health related issues and this is substantiated by Occupational Health then the Capability Procedures relating to health reasons may be followed.
- 9.6 During the informal meeting the manager should outline to the employee the areas where their work performance is not meeting the required standard. Relevant paperwork which may include up to date job descriptions, appraisal objectives, 1 to 1 meeting notes etc. should be readily available to support these discussions.
- 9.7 To support and evidence improvement the manager and employee should agree and put into place an improvement plan which should contain SMART objectives (Specific, Measurable, Achievable, Realistic and Time-bound) as

part of a Performance Improvement Plan. This will allow the manager to monitor the improvement that is being made.

9.8 The improvement plan should include:

- Details of how the manager will assist the member of staff to reach the improvements required.
- An outline of the time period within which the specified improvement(s) will be monitored and feedback given on progress.

9.9 Where an action plan can not be agreed advice will be sought from Clackmannanshire Council HR and where appropriate an independent line manager will review the action plan and recommend changes if appropriate. If agreement still cannot be reached the line manager may impose the action plan or move to the formal stages of the Capability Procedure.

Generally, the time period for informal capability will be for a maximum of 3 months. However, each case will need to be considered on its own merits and it may be that a shorter/longer monitoring period (no less than 1 month) is required.

9.10 The employee should be provided with a copy of their agreed SMART objectives, along with the Performance Improvement Plan and details of the frequency of review meetings to monitor progress. Where possible these meetings should take place every two weeks.

9.11 Managers must ensure that the employee is fully supported during this time, through training or by whatever means are agreed as necessary.

9.12 Managers must ensure that written records are kept to provide evidence of performance improvement throughout this period. The employee should then be given a copy of all written documentation.

9.13 Employees should be aware that failure to make an agreed adequate improvement during the set time period of the informal process may result in progression to the formal procedure.

- 9.14 At the end of the agreed monitoring period the manager should meet with the employee to discuss progress and inform them of the outcome of the review period. The manager must then confirm this to the employee in writing:
- Where performance has reached the required standard an agreement to maintain the standard of performance should be made including how this will be achieved.
 - That failure to continue to sustain these improvements will mean that the individual may progress to the formal process. It should be noted that if sustained improvements are not maintained for six months then the individual will be progressed to the formal process.
 - Should the performance level remain unsatisfactory at the end of the monitoring period the employee should be invited to a Stage 1 – Formal Capability Meeting.
- 9.15 No decision to progress to the formal procedure should be taken until the manager has had a discussion with Clackmannanshire Council HR representative and has provided copies of all documentary evidence for review.

10.0 Formal Procedure - Stage 1

- 10.1 The employee must be written to advising of the shortfall in performance and provided with all documentation such as review meeting minutes, Performance Improvement Plan and the outcomes as part of the informal process.
- 10.2 The letter should clearly outline the shortfall in performance and details of supportive measures/training that have taken place to support the employee reach the required level of performance. An employee must be given at least 10 working days' notice of any Formal Capability Meeting.
- 10.3 The invite letter must confirm to the employee their right to representation as well as the possible outcomes of the formal process.
- 10.4 During the meeting discussion should include the following:
- A review of the monitoring period and support given.

- Agreement (where practicable) of the Performance Improvement Plan and further targets.
- Any further training and support that is required and can be provided.
- Consideration of any mitigating circumstances that may be affecting the employee's performance.
- Setting of the review period (review period should normally be three months).

10.5 Each case will need to be considered on its own merits and as such it may be that a shorter or longer monitoring period is required. Advice should be sought from Clackmannanshire Council HR in all cases.

10.6 Should mitigating circumstances be raised the manager should consider whether an Occupational Health referral (where this has not been completed) or further support/training is appropriate. Advice can be sought on this from the Service HR Business Partner.

10.7 The outcome of Formal Capability Meeting will be confirmed in writing, within 5 working days. A copy of the Performance Improvement Plan must be enclosed with the letter. The date for the first review meeting and final review meeting at the end of the monitoring period should be agreed in advance and included in the letter.

11.0 Review Meeting

11.1 Managers must ensure that a review meeting takes place following the end of the Stage 1 Review Period.

12.0 Review Meeting Outcomes – Stage 1

12.1 There are a number of possible outcomes to the Stage 1 review meetings.

12.2 Outcome of Stage 1:

No Improvement

- Should there be no improvement noted and no sufficient reason given and the manager has documentary evidence to support this, then this will be confirmed in writing to the employee. The employee will be advised in writing that as there has been no improvement and no sufficient reason/evidence provided so they will be progressed to Formal Capability Hearing - Stage 2.

Partial Improvement

- If there has been some improvement in the employees work performance and the manager has evidence of this, then a further review period (a minimum of 1 Month) will be set to allow the employee time to reach the required standard to which they are progressing. The employee will be advised by letter that their review period will be extended for a further agreed period.
- Should the improvement in performance continue to be sustained then at the end of the review period they will be invited to a further meeting to review progress and confirm if they have been successful in meeting the agreed objectives.
- Should the improvement in performance not continue the employee will be advised in writing that the partial improvement has not been sustained and so they will be progressed to Formal Capability - Stage 2.
- It should be noted that if improvement is made at the end of the review period that there is a monitoring period of six months where these improvements should be maintained. Failure to sustain these will mean the individual will progress back to the stage of the Capability Procedure they were originally at.

Sustained Improvement

- Should it be found with sufficient evidence that the employee has met the objectives of the Performance Improvement Plan then the manager will write to confirm that they will be removed from the Formal Capability process but will continue to be monitored for a period of six months.

- The letter will detail that failure to continue to sustain these improvements for a period of six months will mean that the individual will progress back to the stage of the formal process they were originally at.

13.0 Formal Capability - Stage 2

- 13.1 A Formal Stage 2 Hearing will be convened by the Assessor/Assistant Assessor who has had no involvement at any previous formal stage of the procedure.
- 13.2 The employee will be provided with 10 working days' notice to attend the Hearing and will be invited to provide any evidence they feel is relevant for the chair to consider.
- 13.3 Any documentation from the employee should wherever possible be submitted 2 working days prior to the Hearing including advance notification to the Chairperson of the number of witnesses (if any) that they plan to call.
- 13.4 The additional information will be distributed to all parties by the Chairperson prior to the Hearing.
- 13.5 If the employee wishes to attend the Hearing but is absent due to sickness or other unforeseen circumstances or their representative is unable to attend, the meeting may be rearranged, within 10 working days or as soon as is practicable. The employee should be notified of the date in writing and informed that if they are not able to attend on the revised date the Hearing will proceed on this occasion in their absence. If the employee cannot attend personally they will be invited to put their case forward either through a representative or alternatively they can submit their case in writing in advance by no later than 3 working days in advance.
- 13.6 After considering the facts of the case the Chairperson will communicate their decision in person to the employee verbally where possible after a brief adjournment and confirm this in writing within 5 working days.

14.0 Hearing Outcomes – Stage 2

14.1 There are a number of possible outcomes to the Stage 2 Formal Capability Hearing:

14.2 Outcome of Stage 2

Insufficient Improvement

- The employee will be formally advised that they are being dismissed on the grounds of Capability (competency) and reasons must be given.

Sustained Improvement

- Should it be found with sufficient evidence that the employee has met the objectives of the Performance Improvement Plan then the Chairperson of the Capability Hearing will write to confirm that they have been removed from the Formal Capability process. This letter will also detail that failure to continue to sustain these improvements for a period of six months will mean that the individual will progress back to the stage of the formal process they were originally at.

15.0 Dismissal

15.1 Where an employee is dismissed on the grounds of capability they will receive pay in lieu of notice along with any outstanding annual leave.

15.2 The outcome of the Stage 2 – Formal Capability Hearing should be confirmed to the employee in writing by the Chairperson of the Hearing. Where an employee is dismissed on the grounds of capability the letter should include details of their right of appeal.

HEALTH RELATED CAPABILITY

16.0 Health Related Capability

- 16.1 There are occasions when an employee is unable to perform their duties due to ill health or due to an underlying health condition. If Medical Certification or Occupational Health information shows an employee has an underlying medical condition which is the reason for poor attendance, a view should be taken on whether continued or increased support will help the employee to attend more consistently or to return to work. It should also be ensured that all reasonable steps have already been taken in line with recommendations from Occupational Health where appropriate.
- 16.2 Where these circumstances arise CSVJB will ensure that it provides reasonable support to assist the employee in making a full recovery.
- 16.3 Being ill or hitting absence management triggers are not necessarily sufficient reasons to proceed to the formal Capability Procedure. Each case should be considered on an individual basis taking into consideration of:
- Length of absence
 - Nature of absence
 - The likelihood of recovery and the potential to attend work consistently or return to work.
- 16.4 Through discussion with Clackmannanshire Council HR, and where a foreseeable return to work is unlikely, consideration should be given to whether it is appropriate to follow the Health Related Capability Procedures.

17.0 Absence Management

- 17.1 Managers should ensure that they manage absence whether short or long term in line with the maximising attendance procedures.
- 17.2 The member of staff that is absent should be communicated with on a regular basis and where appropriate absence review meetings should take place where an individual is absent long term.

- 17.3 On the basis of the information received from the Occupational Health report, discussion should be focused around the advice given in the report, the views of the employee, any recommendations made by OH or agreed next steps such as a specialist report being sought.

18.0 Review Meeting

- 18.1 The member of staff will be invited to attend the review meeting, with their right to representation outlined. Further action following the review meeting may take a number of different forms:

A list of potential outcomes could be:

- A further review meeting is agreed and arranged.
- Workplace adjustments for a period of agreed time.
- Return to work date agreed.
- A Capability Hearing.
- Ill Health Retiral.
- Mutual Termination.
- Review current duties/ role.

- 18.2 All outcomes will be considered on the reasonableness of these to the case being dealt with.

- 18.3 Before a manager makes a decision on the appropriate outcome this should be discussed with Clackmannanshire Council HR.

- 18.4 The outcome of the review meeting will be communicated to the employee via letter. This letter will outline what has been decided as appropriate and how this will progress.

19.0 Capability Hearing

- 19.1 The health related Capability Hearing will be convened by a manager who has had no involvement at any previous stage of the procedure.

- 19.2 The employee will be provided with 10 days notice to attend the Hearing and will be invited to provide any evidence they feel is relevant for the Chairperson to consider.
- 19.3 A Clackmannanshire Council HR representative will be in attendance for any health related Capability Hearing.
- 19.4 The manager who has progressed the employee through the Capability Process will present management's case. The presentation will include evidence of the steps taken to support and assist the employee. Documentary evidence will also be provided in terms of support and guidance meeting notes and all Occupational Health reports and Specialist reports where appropriate.
- 19.5 The employee or their representative will have an opportunity to present their case in response to the case presented by management and to ask questions of the manager.
- 19.6 The most recent Occupational Health Report/GP/Specialist report will be discussed in detail and open discussions will take place.
- 19.7 Where prior to the Capability Hearing the employee has indicated that they wish to be considered for Ill Health Retiral, this will be discussed and figures provided from Pensions if appropriate.
- 19.8 The chairperson will ask questions of both sides where necessary to make a decision on the basis of the facts.
- 19.9 After considering the facts of the case the Chairperson will communicate their decision in person to the employee verbally where possible and confirm this in writing within 5 working days of the Capability Hearing.

20.0 Capability Outcomes

- 20.1 Apart from dismissal on the grounds of Capability there are other outcomes that can be considered as an outcome to a Health Related Capability Hearing:
- If agreed by both parties, the employment relationship may be ended by way of mutual termination.
 - The Chair may consider a further review period.

- The health related capability meeting would be reconvened at the end of the review period.
- Should the employee be unable to resume their duties the outcome of the reconvened meeting will normally result in the employee being dismissed on the grounds of capability should there be no new evidence to consider.

21.0 Dismissal

- 21.1 Should dismissal be the outcome of the Performance Capability Hearing then this decision and the dismissal date will be clearly stated in the outcome letter. Employees will receive pay in lieu of notice along with any outstanding annual leave.
- 21.2 Employees that are dismissed on the grounds of Health Related Capability will receive pay in lieu of notice along with any outstanding annual leave.
- 21.3 Where an employee is dismissed on the grounds of Performance Capability then all appropriate professional bodies will need to be identified and where appropriate informed.

22.0 Monitoring and Review

- 22.1 Both Senior Management and Trade Union Representatives shall monitor the effectiveness of these procedures on an ongoing basis. Amendments will be made as and when deemed necessary and, where appropriate, after consultation with recognised trade unions.

Equality Impact Assessment

Policy Name	Capability Procedure
Policy Lead	HR
Equality Impact Assessment	
Full EQIA required	Yes <input type="checkbox"/> No* <input type="checkbox"/>
Date Full EQIA complete	N/A
Date Approved	
Review Date	