

## **Appendix 2**

### **Draft - Capability Procedure**

#### **1.0 Introduction**

- 1.1 This procedure applies to employees about whose performance there are concerns that day to day management support and the performance management framework have not been able to address.
- 1.2 This capability procedure is not designed to be a punitive management process but is intended to encourage improvement in work performance at an early stage before a problem becomes unmanageable. The procedure allows for fair and consistent treatment of employees and hopefully through co-operation of all involved, a positive outcome will be achieved.
- 1.3 At each stage of this procedure the timescale for the required improvement should be indicated after making an assessment of the problem.
- 1.4 A form is attached as Appendix 1 to record the support programme agreed.

#### **2.0 Alternative Procedures**

- 2.1 Capability issues refer to the skills, knowledge and abilities of an employee and where this can be clearly distinguished from their conduct or misconduct this will be dealt with under the Capability procedure. If this distinction can not be clearly made the matter should be considered as a disciplinary issue.
- 2.2 The Council may determine in respect of an issue that it will be considered under an alternative procedure, where it considers it appropriate to do so.

#### **3.0 Informal Stage**

- 3.1 When a performance problem cannot be resolved by day-to-day management support, advice and guidance the Manager should follow a structured method to try and resolve this. Advice should be sought from the HR& OD Service.
- 3.2 The Manager should arrange a meeting with the employee to discuss the concerns. The meeting should be conducted in a positive manner with the aim of achieving a joint resolution to the problems. At the meeting the

- concerns should be clarified and then followed up in writing to the employee.
- 3.3 At the meeting the following should be covered:
- 3.3.1 An explanation of the areas of performance which are causing concerns.
  - 3.3.2 An explanation of the required level of performance.
  - 3.3.3 Identification of any reasons why the performance is causing concern e.g. domestic difficulties or health issues.
  - 3.3.4 Explanation of and agreement to the improvements that need to be made.
  - 3.3.5 An explanation of what remedial action needs to be taken and an agreed action plan of support with clear and achievable success criteria.
  - 3.3.6 Set a reasonable period within which the employee should achieve the improved performance, which normally will be no more than 6 weeks.
  - 3.3.7 Set a date for an interim and final review meeting.
  - 3.3.8 Explain and clarify the implications for the employee if improvement is not achieved.
  - 3.3.9 A written record should be kept and a copy given to the employee.
  - 3.3.10 During the review period the employee's performance should be monitored and the employee should be supported and kept informed of their progress.
- 3.4 At the end of the review period a further meeting should be held to consider the situation.
- 3.4.1 If the required improvement has been made, the employee should be told of this and encouraged in writing to maintain the improvement.
  - 3.4.2 If the action plan has not been met satisfactorily, the Manager will determine whether to extend the period of review or to convene a formal capability hearing. The decision will be confirmed in writing.
- 3.5 If it becomes apparent at this stage that the poor performance is caused, not by capability, but by a lack of willingness to carry out reasonable duties, then the formal disciplinary procedure should be invoked (see Disciplinary Procedure).
- 3.6 There is no right of appeal at the informal stage.
- 4.0 Formal Capability Hearing**
- 4.1 The Manager supported and advised by HR&OD will meet with the employee. At least 5 working days notice will be given and the notification will give details of the time and place of the meeting, and will advise the

- employee of their right to be accompanied by a work colleague or trade union representative. The employee will be informed in writing of the nature of the concern(s) regarding their perceived lack of capability and given copies of any documents or evidence from previous stages that will be used. The employee will be told that he/she can present a written statement prior to the hearing should they wish to do so.
- 4.2 If performance is unsatisfactory an appropriate formal warning (first written warning or final written warning) will normally be issued dependent upon the seriousness of the problem and a review period set. The length of the review period will be no more than 3 months.
- 4.3 Where a formal warning is issued, the Manager should:
- 4.3.1 Explain to the employee where the shortfall in their performance is.
  - 4.3.2 Give clear guidance on the improved standard or performance required.
  - 4.3.3 Explain the support that will be available, and how performance will be monitored. The support should be provided by someone other than the person undertaking the monitoring.
  - 4.3.4 Depending on the level of warning issued, identify the timetable for improvement and agree a date for the next or final review meeting.
  - 4.3.5 Make it clear that failure to improve may lead to further formal action up to and inclusive of dismissal.
  - 4.3.6 Inform the employee of their right of appeal against the decision.
- 5.0 Final Stage**
- 5.1 The Manager will meet with the employee at the end of the review period and if satisfactory improvement has not been made, the Manager will refer the matter to a senior manager to consider the case.
- 5.2. The senior manager, who will be advised and supported by HR&OD, will meet with the employee. At least 5 working days notice will be given and the notification will give details of the time and place of the meeting and will advise the employee of their right to be accompanied by a work colleague or trade union representative. The employee will be informed in writing of the nature of the concern(s) regarding their perceived lack of capability and given copies of any documents or evidence from previous stages that will be used. The employee will be told that he/she can present a written statement prior to the hearing should they wish to do so.
- 5.3 The senior manager may determine one or more of the following:
- 5.3.1 The matter be referred back to the Manager for further actions, together with any other recommendations made.
  - 5.3.2 Action short of dismissal, e.g. demotion, compulsory transfer to another post.

- 5.3.3 The employee be dismissed on grounds of poor performance, subject to the right of appeal.
- 5.3.4 The decision will be conveyed in writing to the employee and will also indicate his/her right of appeal where appropriate.

## **6.0 Appeal**

- 6.1 If the employee wishes to appeal against a decision they should submit their appeal in writing to their Chief Officer within 10 working days of receipt of the decision setting out their reasons for the appeal. An Appeal Hearing will then be arranged. The employee will be invited to the Appeal in writing, which will include notification of their right to be accompanied by a trade union representative or an appropriate work colleague and any relevant documentation which will be provided to the Appeal Panel.
- 6.2 Appeals should be heard without unreasonable delay. For formal warnings or transfer, the Appeal will be heard and determined by a Chief Officer (or their authorised officer), advised by the Director of HR&OD (or their authorised officer). In cases of dismissal or demotion, the Appeal Hearing will be heard and determined by a Chief Officer (or their authorised officer) after consultation with a Cabinet Member, and advised by the Director of HR&OD (or their authorised officer).
- 6.3 The chosen panel for the Appeal will, wherever possible, not previously have been involved in the specific process, so that an independent review of the decision can be made. The decision made at the Appeal will be confirmed in writing to the employee and will be final with no further internal right of appeal.

## **7.0 Additional Information**

- 7.1 Where an employee raises a grievance during the capability procedure the capability procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.
- 7.2 If long term sickness absence appears to have been triggered by the commencement of this procedure, the case will be dealt with in accordance with the attendance management procedure and the employee will be referred immediately to occupational health to obtain advice on the employee's health and fitness to continue with this procedure. In some cases it may be appropriate for this procedure to continue during a period of sickness absence.
- 7.3 There may be instances where concerns about performance are sufficiently serious to warrant the procedure being implemented at either the formal capability hearing stage or final stage of the procedure without having progressed a matter through the previous stages.



**Impact against the overall objectives:**

**Manager's signature:**

**Employee's signature:**

**Date:**