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# Capability

## Policy and Procedure

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# Policy

## Aim

- 1 The Council is committed to ensuring that all staff have the appropriate skills, knowledge, competence and aptitude to undertake their duties effectively so that the Council is able to deliver good quality, cost effective services, and its employees are motivated and reach their full potential.

## Scope

- 1.2 This policy applies to all Council employees except employees in locally managed schools and colleges and centrally employed teachers.
- 1.3 For the avoidance of doubt, it applies to the Chief Executive, Directors and Chief Officers, but the procedural stages will be adapted to cover the requirements of the JNC for Chief Executives and the JNC for Chief Officers' conditions of service in respect of capability.
- 1.4 This policy does not form part of any employee's contract of employment and may be amended at any time, in consultation with the Employee Side and the recognised Trade Unions. Notwithstanding this point, any dispute arising from the application of this policy, procedure and guidance will be raised with and dealt with in consultation with the ES and resolved at the Council's Employee Joint Committee or escalated to formal dispute resolution procedures with the Local Government Association as appropriate.

## Roles and Responsibilities

### Employees

- 1.5 All employees have a contractual responsibility to perform to the required satisfactory standard for the role.
- 1.6 Employees are expected to attend any meetings and hearings convened in accordance with the Capability Procedure.
- 1.7 Employees need to ensure that they cooperate with reasonable management processes and guidance in order to maintain and improve their capability and performance.

### Managers

- 1.8 Managers are responsible for applying this policy and Council rules, practices and procedures in a fair and consistent manner.

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## Human Resources

- 1.9 Human Resources will provide advice as necessary during a capability review process. Human Resources will also attend a Formal Stage 3 hearing.

## Workplace Colleagues / Trade Union Representatives / Trade Union Officials

- 1.10 A Trade Union Representative, Trade Union Official, or workplace colleague:
- Can accompany the employee to meetings at all stages of the Capability Procedure and address the meeting or hearing in order to ask questions and can talk privately with the employee.
  - Can address the meeting to put and sum up the employee's case. In exceptional circumstances, they may respond on behalf of the employee as their acknowledged advocate. They may also confer with the employee during the hearing and request adjournments in order to consult.
  - Does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employee from setting out their case.

# Procedure

## Aim

- 2 The aim of this procedure is to help and encourage all employees to achieve and maintain standards of capability and to ensure that the Council has fair and effective procedures in place for dealing with capability issues.
- 2.1 This procedure must not be used when the issue is lack of capability due to high or excessive workloads, in which case the manager must seek to prioritise work with the employee and ensure a 'Stress at Work' risk assessment is completed: <https://intranet.sutton.gov.uk/task/health-and-safety-guide/template-risk-assessment-forms/>.
- 2.2 A range of support is available to managers and employees to assist with implementing the procedure, including learning and development interventions and access to confidential advice through the Council Employee Assistance Programme (EAP). Managers should make themselves aware of this support and ensure that it is accessed in support of employees where the Stress at Work risk assessment has identified a risk or where otherwise appropriate.

## Scope

- 2.3 This procedure applies to all employees, except employees in locally managed schools and colleges and centrally employed teachers. For clarification, it applies to the Chief Executive, Directors and Chief Officers, but the procedural stages will be adapted to cover the requirements of the JNC for Chief Executives and the JNC for Chief Officers' conditions of service in respect of capability.
- 2.4 This procedure shall not apply during an employee's probationary period where the probation policy applies (link to Probation policy).
- 2.5 This procedure does not form part of any employee's contract of employment and may be amended from time to time except that the paragraph in relation to redeployment, transfer or demotion has contractual force.
- 2.6 It is important that all employees including managers read and understand this document. If employees are not sure about any part of it, they should ask their manager and/or Human Resources.
- 2.7 Managers with responsibilities for performance management must receive training to help them manage performance effectively, which includes managing capability/poor performance. This should include how to approach managing poor performance and setting objectives/targets.

- 2.8 This procedure is compliant with the Council's Equality and Diversity Policy and the ACAS Code of Practice on Disciplinary and Grievance Procedures. In applying this procedure, managers should have regard to this policy and the Code of Conduct.

## General

### 2.9 Managers are responsible for:-

- Making sure employees are aware of their responsibilities in order to carry out their job role, description/job profile, work plan, any instructions and any other agreed objectives and standards of work;
- Monitoring capability. Managers have the right to talk with an employee (see Guidance below) if they consider their performance is of concern;
- Applying this policy and Council rules, practices and procedures in a fair and consistent manner;
- Developing a culture where employees are supported and assisted in achieving the required work standards. This includes setting realistic and measurable standards, ensuring that Employee workloads are reasonable supporting employees in reaching them (through training, development, coaching etc.) and taking appropriate action under the Council's procedures when they are not being met;
- Recording and keeping details of all meetings with the employee and any targets set or monitoring and support given, and to present the details of capability cases, should the issue reach a formal hearing under this Procedure;
- Adopting a management style which encourages open communication and builds trust.

### 2.10 Managers and employees should have regard to the following:

- Capability relating to work performance differs from capability due to sickness (see the Council's Managing Sickness Absence Procedure). This procedure does not preclude reasonable adjustments for an employee with a disability even at informal stage (as required by the Equality Act 2010).
- The Council's Equality and Diversity Policy, including the protected characteristics within the Equality Act 2010.
- Breaches of conduct are covered by the Council's Disciplinary Policy
- Professional standards where they exist
- Current workloads and working hours\* in terms of reasonable expectations

**\*Note:** Managers should be aware of the Working Time Regulations.  
<http://www.legislation.gov.uk/ukxi/1998/1833/contents/made>.

- 2.11 In exceptional circumstances there may be cases of gross incapability/incompetence, which are so serious as to bring into question the continued employment of the person concerned. Examples of this may include:-
- Actions which have, or could potentially, seriously endanger life or the health and safety of staff and/or the public;

- Serious professional misjudgement which has, seriously damaged or has serious implications for the Council's property or reputation;
- Significant failure to adhere to statutory requirements or professional standards.

These examples are not exhaustive.

### Informal Procedure

- 2.12 Poor work performance of an employee should be raised promptly and discussed at regular 1:1 meetings or at meetings to review performance. If an issue is identified at a time when a regular meeting is not scheduled, a specific meeting may need to be arranged. It is expected that the majority of issues related to capability will be resolved promptly and informally at this level.

### Formal Procedure- Stage 1

- 2.13 In cases where the required standard has not been achieved even after progressing through the informal procedure a manager needs to decide as to whether to continue to the formal procedure. If the manager considers that the matter needs to be dealt with on a formal basis, a Stage 1 meeting should be set up. The minimum timescales to be utilised under this procedure are set out in Appendix A.

- 2.14 The employee should be informed in writing of the requirement to attend the meeting and given at least 5 working days' notice. This letter should include:

- A statement giving details of the employee's alleged capability issue/evidenced by the manager;
- The performance improvement plan which both sides have discussed and agreed;
- Record of monitoring/progress to date;
- That the matter has been progressed to Stage 1 under the Capability Procedure;
- The date, time and location of the meeting;
- Confirmation of the employee's right to be accompanied by an Employee side Rep workplace colleague, Trade Union Representative or Trade Union Official;
- The possibility of termination of employment at the end of the procedure if the employee's performance does not improve.

- 2.15 At the meeting, the manager should:

- Undertake a review of the monitoring period and support given;
- A discussion around the capability issue(s);
- Outline clear objectives and the standards required to remedy the capability issue(s);
- Agreement (where practicable) of the performance improvement plan and targets (PIP) (see Appendix B);
- A discussion about what further training and support is required and can be provided;
- Consideration of any extenuating circumstances;



- Establishment of a formal monitoring review date and any interim review meetings (suggested at least 2);
- The employee should be forewarned that their level of capability is not acceptable and that failure to improve could lead to dismissal;

2.16 Following the meeting, the manager should:

- Confirm to the employee in writing the outcome of the formal meeting;
- Provide the employee with minutes of the meeting(s) and the agreed performance improvement plan, including any comments from the employee and the date of the next interim review meeting(s). By signing the PIP, the employee confirms they are fully aware of the action(s) to be taken and their role in the process.

2.17 The monitoring period will depend on the complexity of the situation and the role of employee and may depend on:-

- The work being carried out
- The level of improvement required
- The Employee's length of service and general work record i.e. no previous action has been taken under this procedure
- The availability and duration of any training identified or other measures to improve performance.

2.18 Unless there are exceptional circumstances, the monitoring period should not normally exceed 3 months.

2.19 During the monitoring period, the manager will meet with the employee and their representative periodically to provide feedback on their progress and amend the PiP by agreement where appropriate.

2.20 At the end of the monitoring period following the final review meeting there will be 3 possible outcomes;

- Advise the employee has now reached the required standard of capability and that, that no further action is to be taken under this procedure and record this in a follow up letter. Afterwards the usual supervision meetings and appraisals are held at the appropriate intervals.
- The employee has made demonstrable improvements, but his/her capability is still below acceptable standards. A further review period will therefore be required,
- The employee has made little or no improvement, and has shown few signs that he/she will be capable of meeting the required standard. In such circumstances, the process will be moved to Stage 2 of the procedure.

## Formal Procedure- Stage 2

- 2.21 Where the capability does not improve or where the problem is more serious, a Stage 2 formal meeting should be arranged.
- 2.22 The employee should be informed in writing of the requirement to attend the meeting, giving at least 5 working days' notice. This letter should include:
- A statement giving details and evidence of the employee's alleged capability issue(s) and confirmation that the matter has progressed to Stage 2;
  - The PiP from Stage 1;
  - A record of monitoring/progress to date;
  - The date, time and location of the meeting;
  - Confirmation of the employee's right to be accompanied by a workplace colleague, Trade Union Official or Trade Union Representative;
  - Any documentation that management and/or the employee/representative wish to submit should be provided in advance wherever practicable. This will avoid delays at the meeting.
- 2.23 At the meeting, the manager should:
- Undertake a review of the monitoring period and support given
  - A discussion of the alleged capability issue(s).
  - Consider any extenuating circumstances that may be affecting the employee's performance.
  - Where practicable, agree a revised/new PiP, as necessary, with the employee together with any targets.
  - Discuss what further training and support is required and can be provided.
  - Agree a monitoring period and the dates / timings of interim review meetings. At least two meetings are recommended at which the employee may be accompanied by a Trade Union representative, the Employee Side Secretary or a workplace colleague.
  - Advise the employee that the level of capability is not acceptable and that failure to improve could lead to their dismissal
- 2.24 After the meeting, the manager must confirm to the employee in writing the outcome of the formal meeting and the agreed PiP, and set out the date of the next interim review meeting.
- 2.25 During the monitoring period within the formal procedure, review meetings should be held at regular intervals. The manager must keep a record of the review meetings and where using the PIP to ensure that it is updated at each review meeting, with the manager/employee indicating their understanding of progress/action.
- 2.26 Timescales will vary from case to case and will depend largely on:-
- The work being carried out; the level of improvement required;

- The employee's length of service and general work record i.e. no previous action has been taken under this procedure;
  - The availability and duration of any training identified or other measures identified to improve performance.
- 2.27 At the review meeting, at the end of the agreed period the line manager will discuss the progress with the employee and inform them of the outcome of the review period
- 2.28 At the end of the monitoring period, the manager informs the employee of the outcome and next steps. Following the meeting, the manager must send a letter to the employee summarising the discussion and outcome(s).within 5 working days

## Outcomes

2.29 There are 3 possible outcomes:

- Advise the employee has now reached the required standard of capability. This will be recorded and a follow up letter sent to the employee.

However if, during a period of 3 months after the letter has been received, there is an occurrence of capability issue(s) which differs from the original concerns, the manager will need to restart the review procedure from Stage 1. If, however, during the 3 month period, the capability issue(s) relates to the same issues/concerns about below standard work of the kind previously addressed, then the manager will return to the stage of this procedure previously reached. For example, if Stage 2 of the procedure had been reached, the review will restart at Stage 2 rather than recommencing from Stage 1. Afterwards the usual supervision meetings and appraisals are held at the appropriate intervals.

- The employee has made demonstrable improvements, but his/her capability is still below acceptable standards. A further review period will therefore be required. If the outcome of that extended monitoring period is that the employee has still not improved to an acceptable standard, a formal hearing will be arranged.
- The employee has made little or no improvement, and has shown few signs that he/she will be capable of meeting the required standard. In such circumstances, a further formal capability hearing will be arranged.

2.30 An employee whose capability is being monitored under this procedure may accept at any time they are experiencing difficulties in carry out their job and ask that they be considered for other work. Where it is mutually agreed between the Council and the employee that they should change jobs, there will be no preferential treatment for the employee when they are considered for other employment opportunities with the Council. There will also be no protection of salary, conditions of service specific to the original job etc., and the employee will not be entitled to a redundancy payment if the alternative work is not suitable (whether or not a trial period is applied).

### Formal Procedure- Stage 3 (Final Hearing)

- 2.31 The independent manager chairing the Final Hearing will have no prior knowledge or involvement of the case. The manager will write to the employee giving at least 5 working days' notice of the date of the hearing. This letter should include:
- A statement and evidence giving details of the employee's alleged capability issue(s) and the PIP and confirmation that the matter has progressed to Stage 3;
  - A record of monitoring/progress to date;
  - The date, time and location of the hearing;
  - The name of the manager conducting the hearing, together with the name of the manager (normally the employee's manager) who will be presenting the management case;
  - Confirmation of the employee's right to be accompanied by a workplace colleague, Trade Union Representative or Trade Union Official;
  - Any documentation that management and/or the employee/representative wish to submit should be provided in advance wherever practicable. This will avoid delays at the meeting;
  - Notification that a decision may be taken to dismiss on the grounds of capability.
- 2.32 Documentation should be submitted to the Chair of the Hearing and the other party at least 5 working days from Management side and 3 working days from the employee prior to the hearing wherever practicable, together with advance notice of the identity and number of witnesses (if any) that either party intend to call. Should Management side seek to submit a statement of evidence, such as new evidence, less than 5 working days before the date of hearing (or in the case of the Employee less than 3 working days), the manager chairing the hearing should consider whether or not, exceptionally, to admit it as evidence taking account of the reasons for the late submission. The manager must not refuse to accept any evidence which may have a significant bearing on the outcome prior to the hearing.

### The Formal Stage 3 Hearing

- 2.33 The formal hearing will be conducted by the Hearing Officer (a senior manager of at least Executive Head of Service level) who has not been involved in the informal or formal procedure), who has the authority to agree the range of PiPs and dismiss if required.
- 2.34 Human Resources will be available to advise on specialist knowledge of procedural issues, relevant policies and employment law matters. They will participate in an advisory capacity in the hearing although the final decision will be made by the Hearing Officer.
- 2.35 The management case will normally be presented by the employee's manager. This procedure allows for the following action/outcome(s) to be applied:

- No further action;
  - Extension of previous monitoring period. A further formal hearing may take place at the end of this period, following the same procedure. This will only be appropriate where the Hearing Officer believes that a further monitoring period could lead to the required improvement in capability. A PiP will be developed, including a date for review and the timescales can be between 4 -12 weeks depending on the nature of the issue(s). The Hearing Officer will advise the employee that a failure to achieve the required improvement may lead to the employee's dismissal or, where dismissal is the outcome and through consultation with the employee, consideration may be given to further training , a redeployment, transfer, or demotion into alternative employment where a suitable vacancy exists subject to the Employees agreement;
  - Dismissal.
- 2.36 Where dismissal is the outcome and where redeployment, transfer, or demotion is deemed mutually acceptable, a trial period of 4 weeks will be given to assess the employee's suitability in the new post. The trial period may be extended for up to 3 months or 6 months in exceptional circumstances where retraining is required. The pay and conditions of the new post will apply.
- 2.37 Where an employee has been given notice of dismissal and redeployment, transfer or demotion becomes available within the notice period, the notice period will be extended to accommodate the trial period.
- 2.38 Where redeployment is not appropriate, available or a trial period is unsuccessful, the employee may be dismissed on the grounds of capability.
- 3.39 The outcome of the formal hearing should be confirmed to the employee in writing within 5 working days, confirming the right of appeal against any sanction imposed.

## Appeal

- 2.40 If an employee wishes to appeal against the outcome of the formal hearing for a decision *other* than a dismissal, they must do so in writing, within 10 working days of the date of the outcome letter. Appeals should be made to Human Resources. The Manager hearing the appeal will be advised by Human Resources, as necessary
- 2.41 Appeals against dismissal should be made in writing to The Executive Head of Human Resources within 10 working days of the outcome letter, and would follow the Council Appeal Committee procedures. The Council Appeals Committee will hear appeals and will be advised by the Executive Head of Human Resources or their representative.
- 2.42 The employee should set out their grounds of appeal in writing,
- 2.43 The appeal may be on the following grounds;

- The procedure – a failure to follow the procedure which had an effect on the decision
- The decision – the evidence did not support the conclusion of the manager
- The penalty – too severe, given the circumstances of the case
- New evidence – any evidence related to the case which has come to light since the hearing.

This list may not be exhaustive.

- 2.44 The employee will be given notice in writing at least 5 working days in advance of the time and place of the appeal hearing and of their right to be accompanied by a workplace colleague, Trade Union representative or a Trade Union Official.
- 2.45 Copies of any relevant new documents will be made available at least 5 days in advance by management side and 3 days in advance by the employee of the appeal hearing.
- 2.46 The Chair of the Councils Appeals Committee will confirm their decision in writing within 5 working days (unless otherwise agreed between both parties and/or if additional time is required to consider any other factors).

# Additional Guidance

## Aim

- 3 The Council is committed to ensuring that its managers and employees understand the Council's Capability Procedure and how it is applied. This guidance is designed to aid such understanding.
- 3.1 Where there is any doubt as to how the Capability Procedure is applied, Human Resources should be asked to provide the necessary clarification. Managers could also have regard to relevant ACAS Codes of Practice.

## Scope

- 3.2 This guidance is designed for use by managers and employees.
- 3.3 This guidance does not have contractual status and may be amended by the Council from time to time in consultation with the Employee Side.

## General

- 3.4 Managers should be alert for any capability issues that may stem from an employee's disability, which may require review by other procedures for the provision of any reasonable adjustments (Equalities Act 2010) and an understanding of the impact of that provision prior to the commencement of this procedure.
- 3.5 A capability issue is defined as a lack of capability (including knowledge, skills, experience and aptitude) to carry out duties and responsibilities within an employee's job role.
- 3.6 Managers are advised to differentiate between poor performance which is managed under the Policy and Procedure and lack of delivery, due to high or excessive workloads, which may need a different approach.
- 3.7 Examples of lack of capability could be as follows;
  - Poor quality or volume of work;
  - Consistent / repeated failure to meet deadlines, agreed objectives or targets (Note: see guidance on high or excessive workloads);
  - Consistent inability to recognise common problems and find appropriate solutions;
  - Consistent failure to accept or adapt to changing work priorities;
  - Continuing inability to adapt to change, e.g. changes in work practices and targets;
  - A demonstrable lack of skill, knowledge and/or ability to learn; and/or



- Unacceptable level of customer service.

3.8 These examples are not exhaustive. The Council has a wide range of job roles and, consequently, job requirements.

### **Supervision and Appraisal**

3.9 As part of normal management processes, managers should meet employees regularly to:

- Discuss work priorities;
- Monitor progress against objectives;
- Monitor work activity;
- Give praise and helpful feedback;
- Allow time for reflection;
- Discuss any further support, training or development that can be offered in order for employee to carry out their duties and achieve their objectives.

3.10 Managers must undertake appraisal meetings annually, including carrying out a mid-year review with employees to review performance, set work priorities/ objectives and ensure that employees have the necessary skills to meet those objectives. If during the appraisal it is identified that there is a gap in skills or knowledge the manager must explore ways of ensuring this need is met.

3.11 Managers will address issues about work performance quickly and will not wait for an appraisal meeting to discuss performance issues.

3.12 If formal action begins under the Performance Management Procedure, the appraisal process can be suspended (and superseded by the performance management process). When the employee has achieved and maintained the required standard for 3 months the appraisal process can be resumed.

3.13 Managers should note and be aware that subjecting an Employee to this procedure may cause the Employee significant stress and must be mindful to that factor when applying this policy and provide support in order to prevent the Employee becoming isolated and unwell.

3.14 All managers with responsibilities for performance management must receive training to help them manage performance effectively. This should include information on the objectives of performance management, how it will operate and what their role will be. Employees and their representatives will also need training in how to set their objectives and training in other aspects of the system.



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## Informal Procedure

- 3.15 The informal procedure is set out in the Capability Procedure above.
- 3.16 It is expected that the majority of capability issues will be resolved promptly and informally at this level.
- 3.17 A 'supervision' meeting within a social care environment may not be the most appropriate time for raising concerns about an employee's capability. It may be more appropriate for the manager to set up a separate meeting outside the 'supervision' meeting.
- 3.18 At these meetings the manager should first establish whether the capability issue(s) is a drop in an otherwise good work record or whether the problem is more fundamental. In both cases the manager should bring the capability issue(s) to the attention of the employee and work with and support the employee to achieve an acceptable level. The objective will always be to set out a constructive approach to achieving improved work performance.
- 3.19 In cases where the issue is work overload the manager must consider prioritising the employee's workload and considering any reasonable measures to assist in the completion of the tasks including redistribution of workloads.
- 3.20 The manager should establish the reasons for the capability issue(s) and whether this is a result of work related matters or of a personal nature. The manager should try to agree with the employee the course of action required to assist them. It may be decided that it is not necessary to start the formal capability procedure. If this is the case, the manager and employee can agree any actions and review these as appropriate.
- 3.21 Where there are capability issues and there has been a recent re-organisation, use of changed technology or changes in working practice, the manager should provide appropriate opportunities and training in order to enable the employee to understand and achieve a satisfactory standard of the new working methods.
- 3.22 Where changed service priorities result in changed targets and objectives, the manager should consider the impact of these on workloads, targets and objectives, which should be agreed, where possible, with the employee.
- 3.23 Where an employee has concerns within the workplace affecting their capability (e.g. they consider that it is being adversely affected by harassment, bullying and/or victimisation), they may elect to progress their concerns through the Grievance Procedure. While the concerns are being progressed under the Grievance Procedure, the manager may temporarily suspend the capability process in order to deal with the grievance. The matter of grievance must be resolved before the outcome of a disciplinary/ capability hearing is finalised. A written agreed record of

any meetings, along with any agreed performance improvement plan, should be completed and a copy of both given to the employee. The agreed summary notes and plan should also include a reasonable agreed timescale when the issue will be reviewed. The timescale will depend on the complexity of the situation and role of employee, but, unless there are exceptional circumstances, should not normally exceed 3 months.

- 3.24 During the agreed monitoring period, the manager should meet with the employee and their representative in addition to any regular supervision to provide feedback on their progress and to amend the plan where appropriate.
- 3.25 At the end of the agreed review, if capability has improved to an acceptable level, the manager will meet with the employee and confirm the outcome of the review. The manager should confirm that no further action is necessary and a record to that effect made and communicated in writing to the employee. Thereafter the usual supervision meetings and appraisals should be held at the appropriate intervals.
- 3.26 Where capability does not improve or where the problem is more serious, the manager should consider more formal action.

### **Formal Procedure- Stages 1, 2 & 3**

- 3.27 Before progressing to Stage 1 of the formal procedure, the manager should prepare a statement outlining the issues with the employee's capability. The statement will need to be attached to the letter sent to the employee under the Capability Procedure. The statement should contain:-
- Details of any 1:1 meetings with the employee and confirm that no or insufficient progress was made under the informal procedure;
  - A statement of the employees alleged capability problem;
  - The performance improvement plan which, wherever possible, both sides had signed up to;
  - Record of monitoring/progress to date;
  - Date, time and location of the meeting;
  - The employee's right to a trade union representative from a trade union or a work colleague.
- 3.28 After meeting with the employee and where possible agreeing the course of action needed to address the capability issue(s), the length the review monitoring period applied at each stage will depend on the complexity of the situation and the role of employee but, unless there are exceptional circumstances, should not normally exceed 3 months. Consideration should be given to:

- The nature of the work being carried out;
- The level of improvement required;
- The employee's length of service and general work record (i.e. no previous action has been taken under this procedure);
- The availability and duration of any training or other measures identified to improve capability.

## Formal Hearings

- 3.29 Formal/ appeal hearings will be conducted by the Hearing Officer (this should be a manager more senior than the manager Exec Head or Director involved in the formal procedure and who has not been involved in the formal procedure), who has the authority to agree the range of Personal Improvement Plans (PIPs) and dismiss/uphold dismissal if required.
- 3.30 Human Resources will be available to advise on specialist knowledge of procedural issues, relevant policies and employment law matters. They will participate in an advisory capacity in the hearing although the final decision will be made by the Hearing Officer.
- 3.31 The management case will normally be presented by the employee's manager.
- 3.32 The Hearing Officer will give both sides the opportunity to put their cases forward and all parties will be able to ask questions.
- 3.33 The Hearing Officer will ask both sides to sum up their cases and then adjourn in order to consider the information given and decide on an outcome. Where possible, the Hearing Officer will give the decision and reasons verbally on the day of the hearing and confirmed in writing within 5 working days.

## Appeal

- 3.34 An appeal may be on the following grounds;
- The procedure – a failure to follow the procedure which had an effect on the decision. Where it is alleged that there has been a failure to follow the procedure, the employee is encouraged to outline the effect any flaw has had
  - The decision – the evidence did not support the conclusion reached by the manager
  - The outcome is too severe, given the circumstances of the case
  - New evidence – any evidence relating to the case which has come to light since the hearing and which was not reasonably available at the time of the hearing;
  - Any other relevant significant reason

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### **Non-Attendance at Meetings/ Hearings**

- 3.35 If the employee is unable to attend a meeting (to include a formal hearing) due to sickness or for an unavoidable reason, the meeting may need to be rearranged.
- 3.36 If the employee and/or their chosen companion are unable to attend on the proposed date with good reason, an alternative time and date may be set which is normally no more than 5 working days after the original date but may be longer if agreed by all parties.
- 3.37 The employee should be notified of the revised meeting date in writing.
- 3.38 An employee who is unfit to attend a capability hearing as a result of sickness must provide a 'fit note' from a doctor confirming that they are unable to attend.
- 3.39 Where the delay arising from such absence becomes problematic, the manager should discuss the matter with Human Resources and the employee's chosen companion to find a way to enable the employee to attend the meeting or participate in the formal hearing as soon as is practicable.

### **Confidentiality**

- 3.40 Personnel records are confidential and are kept by the Council in accordance with the requirements of the Data Protection Act 1998 (as amended from time to time).
- 3.41 In relation to capability matters, personnel records will include documents relating to 'live cases', including the following:
- The concerns regarding the employee's capability;
  - The employee's explanation;
  - The evidence of capability issue(s);
  - The PiP;
  - The decision letter(s);
  - Whether an appeal was lodged;
  - The outcome of the appeal;
  - Any grievance(s) raised during the procedure;
  - Any subsequent developments.
- 3.42 Documents relating to formal capability proceedings are kept by Human Resources on a confidential basis on the personnel file. When the case is no longer 'live' which may be for up to 6 months, such documents will need to be removed from the personnel file.

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## Appendix A

### Timescales for the Formal Procedure

#### Formal Stage 1

6 -12 weeks from completion of the PiP.

#### Formal Stage 2

6 – 12 weeks from completion or updating of PiP as appropriate.

**(Note:** Timescales may be extended depending on the circumstances e.g. if progress is being demonstrated)

#### Formal Stage 3

Formal (Final) Hearing

At least 5 working days prior notification

Note: In the case of the outcome of the formal (final) hearing being an extension to the existing monitoring period, a period of between 6-12 weeks may apply, depending on the circumstances.

#### Appeal

Appeal lodged within 10 working days from receipt of outcome of the formal hearing.

At least 5 working days advance notification of Appeal Hearing. Periods of sickness must be taken into consideration and the timescales extended accordingly

## Performance Improvement Action Plan

Completion of a performance improvement plan is necessary where an employee's performance has been adjudged to be 'unsatisfactory'.

Employee Name		Job Title		Date Prepared	
Specific Areas to be improved	Actions to be taken to improve performance	Timeframe for Improvement	Documentation of improvement (evidence)	Progress achieved	Employee Comments

Manager's Signature	Dates for follow up review
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Employee Signature	Date:
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**Note:** Pages can be added as necessary.