



CAPABILITY PROCEDURE

Introduction

- 1 The purpose of this procedure is to help employees improve their work performance when it is found to fall short of required standards. Should it be necessary to take any action, the procedures will ensure that employees are treated fairly and equitably. The [Performance Development Framework & Appraisal](#) is an effective tool to review performance levels, but issues may also come to light at other times.
- 2 Lack of capability relates to an employee's failure to complete his/her duties satisfactorily, except in the case of misconduct/negligence or sickness absence/ill health for which there are separate procedures;
 - [Disciplinary Procedure](#)
 - [Attendance Management Policy](#)It is not incapability demonstrated over a short period of time which is at issue, and the subject of this procedure, rather the failure or inability to remedy it within a reasonable period of time.
- 3 It is not appropriate for capability cases to be dealt with in the same way as disciplinary misconduct, and so incapability, as outlined above, will be managed within this totally stand alone procedure. If an employee's performance does not improve to a satisfactory standard, over a reasonable period, a formal procedure will be activated and formal actions may be implemented to deal with the situation, this is set out below.

Principles

- 4 The procedure is designed to:-
 - ensure that employees are treated fairly and equitably;
 - help managers to set expectations / illustrate specific areas of under performance / set standards of improvement;
 - give the employee the opportunity to respond to comments;
 - agree a course of action and specific steps to improve performance;
 - provide support, training and reasonable assistance to help an employee overcome under performance. Wherever possible, particular assistance will be given to help employees with disabilities, or special needs;
 - ensure performance is monitored and progress recorded and communicated to the employee;
 - ensure any continued under performance is managed formally and effectively.

Agreed at Establishment Committee on:- 30th September 2004
Policy last Updated:- 12th June 2008



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- 5 Action through the capability procedure (including informal action) may indicate that an employee may be considered to have below expected performance in terms of the behaviours and objectives set and reviewed at appraisal i.e. an increment / bonus (as appropriate) may not be payable in that year (see the [Pay Progression and Eligibility for Bonuses](#), and [paragraph 18](#) below).

Employees Covered by the Procedure

- 6 This procedure covers employees (excluding casuals engaged on an intermittent or irregular basis) who have completed their probation period (normally 6 months – though this may be extended) with the City of London Corporation, except that this procedure does not cover Chief Officers for whom separate procedures apply.

Stages in the Procedure

Informal Procedure

- 7 Unless the circumstances are so serious as to warrant immediate formal action, your manager will meet with you to advise in an informal but constructive manner, of the ways in which your performance fails to reach the required standard, and the steps you need to take to improve. At this stage it would not be appropriate to involve a trade union representative or work colleague in the discussion.
- 8 You will be given an opportunity to comment on your manager's feedback and input to the action plan.
- 9 Your manager will clarify the standards you will need to achieve and objectives to be met. The nature and provision of any additional training, guidance and support available to help you improve your performance will be discussed and agreed with you.
- 10 A period for improvement will be determined, normally between 1 – 3 months (dependent upon the nature of the job), during which the agreed programme of training and guidance will take place if relevant, and your work performance will be monitored and reviewed.
- 11 Your manager will confirm to you in a written action plan the outcome of the meeting, stating the areas of concern and standards/objectives to be met, setting out the agreed programme of training and guidance, where relevant, and detailing the date and time of the review meeting(s).



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- 12 At the review meeting(s), your manager will advise you whether or not your work performance has improved sufficiently. If it has, this will be confirmed to you in writing at the end of the review period, and no further action will be taken. If your work performance has not reached a standard acceptable to your manager, s/he will explain the shortcomings and give you an opportunity to respond. If your manager considers that there is not a justifiable reason for not reaching the required standard, and/or that the shortcomings are likely to continue, then formal action will be taken.

Formal Stage

- 13 A hearing will be arranged with your Chief Officer or a nominated manager at or above grade I / Chief Superintendent (in the City of London Police) / deputy Head (in schools). You will be given written notice, in advance, of the performance issues and copies of any supporting documents. You will usually be given at least 10 working days in advance of the hearing in order to prepare your case. At the hearing you will be able to present your response to the alleged performance issue(s), including presenting documents, any mitigation and calling your own witnesses, if you wish. You may question the case against you, including the evidence given by any witnesses.
- 14 You may refer to relevant documents in support of your case at any hearing and may call witnesses to give evidence on your behalf. You should note that it is your responsibility to arrange for the attendance of any such witnesses, and authorisation from the witness's manager will be required if a witness needs to take time off from their work.
- 15 At all formal hearings, including appeals, you must appear in person, unless the Chief Officer decides otherwise, and may choose to be represented by a Trade Union representative or by a work colleague of your choice whose identity should be notified in advance. In exceptional circumstances the City Corporation would be prepared to consider an external representative who is not legally qualified. Should you wish to have an external representative then you would need to submit your request giving full reasons why an exception in your case to the Corporate Director of HR, whose decision is final.



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- 16 The outcome will either be notified to you straight after the hearing or, if the matter has been complex or if the hearing was lengthy, then the decision will follow as soon as practicable thereafter (normally 1-2 working days later.) The decision will always be confirmed in writing and will explain the nature of the performance issue, the finding and if it was against you the improvement required, the likely consequences if lower than expected performance continues and any actions imposed. You will be advised that you have the right of appeal.
- 17 If incapability/underperformance is proven, then one or more of the following actions may be imposed:
- A written warning
 - A final written warning
 - Dismissal with notice

In the event of a warning being given a further review period would be determined and any further training and support identified. A review period would normally be for not less than four weeks.

- 18 If incapability/underperformance is proven, it will automatically count as below expected performance through the Performance Development Framework & Appraisal and an increment/bonus as appropriate will not be forthcoming in that year.

Further actions which could be imposed in conjunction with, or as an alternative to, any form of warning and withholding pay progression in that year are:-

- Demotion
 - Redeployment
- 19 The action depends on the seriousness of the case and known mitigating factors in your favour, but you have no right to a series of warnings. However, in cases of minor issues of incapability, one or more written warnings and a final written warning will normally be imposed before dismissal is considered. In the case of serious incapability, you may be given a final written warning even if it is a first incidence. In the case of gross incapability, you may be dismissed with notice.



Lapsed Warnings

- 20 The City Corporation believes employees who have been given a warning about their performance should be provided with the opportunity to make a fresh start and for this reason all written warnings will usually be effective for a specified period, which will be communicated at the time it is issued. Generally, final warnings will be effective for 12 months and other warnings for 6 months. They could be longer in certain circumstances. If there are no further concerns in this period, any past warnings will lapse.
- 21 An exception may be made, however, where proceedings have reached the stage of a final written warning. In this case, if there is further under performance outside the review period, the City Corporation may, if appropriate, issue a final warning or dismiss on the recurrence without going through the earlier stages. The appropriate circumstances are likely to be where it appears that a pattern is emerging where there is evidence of abuse as an employee's performance is satisfactory throughout the period the warning is in force, only to lapse thereafter.

Right to Appeal

- 22 If you are dissatisfied with any formal capability decision taken against you, you may appeal to the Staff Appeals Committee. You must write to the Corporate Director of HR to lodge your appeal and enclose a copy of the decision within 5 working days of receipt (not including the day of receipt). You must follow this up with the grounds of your appeal within 10 working days of receipt of the decision (not including the day of receipt). The Committee is generally composed of one Member and two Senior Managers of Grade J and above.
- 23 The same rights to representation apply as in paragraph 14. In the case of appeal hearings, notification of a representative as described in paragraph 14 should be made to the Corporate Director of HR before the hearing date is arranged.
- 24 You and management will be asked to submit, at least 10 working days in advance of the hearing, copies of any documents which you each intend to rely on, to enable them to be circulated to the Members of the Committee, management, you and your representative. Both parties must ensure that the documents submitted are legible and capable of being photocopied. Both parties will also be sent a note describing the procedure which is followed at the Committee.



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Powers of Staff Appeals Committee

- 25 The Staff Appeals Committee may dismiss your appeal, in which case, the original decision will stand, or uphold your appeal, either in whole or in part, and may then substitute some other decision in place of the original decision. The Committee also has the power to make any other determination depending upon the circumstances. Their decision will be confirmed to you in writing, and is final.

Withdrawal of Appeal

- 26 An appeal may be withdrawn before the hearing, this must be confirmed in writing, but at least 2 clear working days' notice must be given if a hearing date has been arranged. A very late withdrawal of an appeal may be regarded as vexatious and grounds for disciplinary action.

Complaints

- 27 Any action being undertaken under the Capability Procedure will not be postponed or delayed because an [Employee Complaint](#) has been raised.