

Capability policy & procedure

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1. Policy

1.1 Aim

The aim of the capability policy and procedure is to enable employees to perform effectively in their role
The policy and procedure aim to ensure that cases of poor performance are dealt with fairly and consistently, with the prime objective of improving an individual's performance to the required level.

1.2 Scope

The policy and procedure applies to all non-school based employees of the London Borough of Lambeth, with the exception of staff who are in their probationary period.

Employees who are within their probation period will be covered by the Council's **Probation policy and procedure**.

1.3 Definitions

For the purpose of this policy an individual's capability to do their job is assessed by reference to their skills, qualification, and aptitude.

1.4 Responsibilities

Employees are responsible for:

- performing their duties to an acceptable standard
- participating in appropriate training and development

Line Managers are responsible for ensuring that:

- the standards of performance required and the arrangements for monitoring and review are clear to all employees
- ensuring that employees receive appropriate training and development
- arrangements for dealing with incapability for work and poor performance are brought to the attention of all staff
- they take all reasonable measures to promote capability of employees under their responsibility
- occupational health advice is sought, where relevant to a case of incapacity for work
- where disability related issues emerge they are addressed in a positive way and, where necessary, the requirements to make reasonable adjustments are met
- full and accurate records are kept of all formal meetings

The **Human Resources Division (HR)** is responsible for:

- providing advice and support throughout the process
- Monitoring the application of the procedure, reporting trends and non-compliance to the Human Resources Departmental Leadership Team (HRDLT) and Senior Departmental Managers (SDM).

2. Procedure

2.1 Introduction

- 2.1.1 Capability procedures are designed around support mechanisms to assist employees to achieve the desired levels of performance.
- 2.1.2 When issues arise it is important that managers identify the performance gap and investigate the cause or causes. Once the reason for the gap has been discovered actions can be agreed with the employee to assist them to bridge the gap or work towards other acceptable solutions. Managers and employees should regularly discuss performance against agreed targets and objectives, identifying areas of concern either to the employee, the manager or both, and identifying strategies for improvement.
- 2.1.3 Managers need to be clear about the objectives and targets they believe should be achieved by staff, such targets and objectives should always be reasonable and realistic, and employees need to understand what is required of them in terms of their work or attendance and the standards to be met.
- 2.1.4 Ideally, capability concerns should be resolved through informal discussions between the line manager and the employee. The formal stages of the procedure should only be used when a manager can demonstrate that informal action has not achieved the desired objective.
- 2.1.5 In very limited and exceptional circumstances, managers may proceed direct to the formal stages of this procedure. Circumstances where this may occur will only include instances of severe incompetence, which would have a serious and direct impact on the health and safety of clients, service users or colleagues. Managers should seek advice and support from the Human Resources Department.
- 2.1.6 This policy is closely aligned with the Council's values relating to **Fairness, Respect, Excellence, Service and Honesty.**

2.2 Setting standards

- 2.2.1 Managers are responsible for establishing the required reasonable standards of work expected from employees, whilst employees are responsible for understanding and meeting those standards. Managers should support and assist employees to achieve these standards, providing necessary training and support.

2.3 Investigation of concerns

- 2.3.1 If an employee is failing to achieve the expected standard of work, the manager should investigate the problem in an attempt to identify the causes for the poor performance, and work with the employee to improve performance providing appropriate support interventions.

2.4 Disability

- 2.4.1 If the employee is or becomes disabled, under the definitions of the **Disability Discrimination Act (DDA)**, the manager will discuss with the employee any reasonable adjustments to support them in their work. Human Resources and other appropriate specialist advice should be sought and the employee should be advised of their right to seek advice and support from their trade union.

2.5 Ill health

- 2.5.1 An individual's capability to carry out their role to the expected standard may be affected by their health and their attendance at work. The process for managing long-term periods of sickness absence (4 weeks or more) and managing repeated short-term absence is set out in the Council's **Sickness policy and procedure**

3. Informal stage – Stage one

3.1 Informal discussions

- 3.1.1 All employees benefit from continuous feedback, reassurance and recognition. In line with the Council's performance review process, managers must hold monthly one-to-one review meetings with employees whom they line manage. These meetings should primarily focus on the employee's progress against their agreed work plan and set objectives. The line manager should discuss any achievements and review any development that the employee has undertaken.
- 3.1.2 The manager should discuss with the employee any concerns they have regarding the employees performance. When discussing issues of poor performance the manager should:
- discuss fully their concerns regarding performance, explaining to the employee exactly how they are falling short of the required standard.
 - ask the employee for their own views
 - seek any other information to gain a fuller understanding of the reasons for the performance concerns, including medical advice, if appropriate
 - confirm to the employee what will happen next and when the employee's performance will be reviewed
 - consider with the employee what support or actions may assist them to achieve the required level of performance
 - warn the employee of the possible consequences of continued poor performance
- 3.1.3 The manager must confirm these discussions in writing to the employee, confirming when the next review meeting will take place (not less than one month). Where there are concerns regarding an employee's performance the manager should ensure that a suitable programme of support is put in place, which may include more regular supervision and/or formal training.
- 3.1.4 When discussing concerns of poor performance managers need to be specific about there concerns and must demonstrate evidence and/or give examples to support their assertions. Managers should be guided by the aim of this procedure set out above which is to "enable employees to perform effectively in their role."
- 3.1.5 At the following review meeting, the manager and the employee will review the outcome of the previous meeting and discuss any progress the employee has made. The manager should seek as much input from the employee as possible, inviting the employee to fully discuss the concerns raised and their own views on their progress. The manager may decide to set a further review period and/or arrange further support and training or to progress the case to a formal capability hearing.

3.2 Training and support

- 3.2.1 The manager and the employee should develop an appropriate development plan including coaching or formal training. This plan should be documented and a copy provided to the employee.

4. Formal stage - Stage 2

4.1 Formal review

- 4.1.1 Where an employee fails to demonstrate that their performance is improving, their line manager will write to invite them, giving at least 3 working days notice, to attend a formal review meeting to discuss their performance. The letter will detail the manager's concerns and advise the employee of their right to be accompanied by a Trade Union representative or work colleague
- 4.1.2 The employee will be informed that their performance remains unsatisfactory and the purpose of the meeting will be to:
- identify the causes of the poor performance and determine what further actions can be taken
 - obtain the employee's commitment to reaching an effective level of performance
- 4.1.3 The manager will decide on an appropriate course of action, which may include:
- Setting a further period of time (usually one month) for the employee to reach a satisfactory standard.
 - issuing the employee with a formal written warning, advising the employee that their employment may be at risk if their performance does not improve
 - Any other reasonable action
- 4.1.4 Details of the formal review and any decisions discussed will be confirmed to the employee in writing. The employee will also be informed of their right to appeal any formal decision made at this meeting. Details of the appeal process can be found in Section 6 of this procedure.
- 4.1.5 Where a further review period is set, the employee will be informed at the end of that period whether or not their performance is satisfactory. The employee will also be informed of the need to maintain satisfactory performance and that any further cause for concern in the next 12 months may result in the manager progressing to stage three of the formal procedure.

5. Formal stage – Stage three

5.1 Capability hearing

5.1.1 If performance issues have been addressed at Stage Two and, the employee is still unable to achieve the required standard of work then the manager should progress the case to the formal stage Capability Hearing. This will be chaired by a manager at the same or more senior level than the line manager who has dealt with the informal process.

5.2 Notification of formal hearing

5.2.1 The line manager is responsible for convening and managing the arrangements for all meetings held under this procedure, except Appeal Hearings. The manager should write to the employee instructing him or her to attend a capability hearing. The letter instructing the employee to attend the capability hearing should:

- Give the employee at least 5 working days notice of the hearing
- Set out the date, time and place of hearing and the names of the panel
- Should describe the nature of the capability issue and action taken so far
- Where possible, be accompanied by the documents that the manager will present at the hearing, although these can be sent under separate cover provided they arrive no later than 5 working days before the hearing. . Documents to be considered at a formal hearing should be set out in a logical order, indexed and paginated, with a written introduction including any conclusions and recommendations to the panel.
- Advise the employee of the right to accompanied by a work colleague or trade union representative
- Provide a copy of the Capability Procedure
- Advise the employee that they need to provide any documentation at least one full working day before the hearing, except where this is not possible in which case documentation should be provided as early as possible.
- Explain that dismissal could be an outcome

5.3 Representation

5.3.1 Employees may be represented at any formal stage of this procedure by work colleague or Trade Union representative.

5.4 Attendance at a formal hearing

5.4.1 The following may attend a capability hearing:

- The Panel of managers who will hear the case
- A HR representative
- The employee
- The employee's representative
- The employee's line manager (The presenting manager)
- A note taker
- Any other member of staff invited by the Panel to advise or give information.

5.5 Requests for postponement

- 5.5.1 At the request of the employee the hearing may be postponed on one occasion. The reasons for the postponement must be explained to the chair of the panel, who will decide whether to agree or not to the postponement. If agreed, the employee must give an alternative date, no more than 5 working days after the original date for the hearing.
- 5.5.2 The hearing will not normally be re-arranged more than once. Further requests for postponement of a hearing will be considered on their merits by the Chair of the panel and will not always be agreed. Following one postponement the hearing may proceed in the absence of the employee.

5.6 Order of business

- 5.6.1 The order of business at a capability hearing will normally be:
- Introductions
 - Presentation by Management
 - Questions to Management by the Employee/Representative and the Panel
 - Presentation by the Employee/Representative
 - Questions to the Employee/Representative by Management and the Panel
 - Summing up by Management
 - Summing up by Employee/Representative
 - Decision of the Panel
 - Panel announce sanction to be given

5.7 Outcomes at a formal capability hearing

- 5.7.1 The panel may decide one or more of the following:
- Further monitoring and/or training
 - A first warning as to future performance
 - A final warning as to future performance, where a first warning has previously been issued
 - Transfer to another post, usually of a lower grade without salary protection, where a final warning has previously been issued. The panel will need to identify a suitable post before making this recommendation
 - Dismissal with pay in lieu of notice where a final warning has previously been issued
 - Any other reasonable action
- 5.7.2 If a Capability Hearing previously issued a warning relating to capability and the employee has not achieved the required standards by the agreed review date, then the line manager should refer the case back to the same panel for further consideration.

5.8 Notification of the decision

- 5.8.1 The decision of the Panel will be notified to the employee in writing as soon as practicable after the hearing, not normally to exceed 5 working days.

The decision will include:

- a description of the capability issue
- the employee's response and views

- the findings of the panel
- the actions to be taken and review period
- the possible consequences of not achieving the required standards
- the right of appeal

5.9 Record of proceedings

5.9.1 It is important to keep written records during the entire capability process. Records must include:

- The capability complaint against the employee;
- The employee's defence and response;
- Findings made and actions taken;
- The reason for actions taken;
- Whether an appeal was lodged;
- The outcome of the appeal;
- Any grievances raised during the capability procedure; and
- Subsequent developments.

5.9.2 Copies of meeting records should be given to the employee including copies of any formal minutes that may have been taken, within five working days of the hearing.

6. Appeal

6.1 Lodging an appeal

- 6.1.1 The employee can appeal against any formal action taken under this procedure. The purpose of the appeal is to review the decision taken by the capability panel, not to re-hear the case.
- 6.1.2 The appeal must be made in writing, to the Executive Director, within 10 working days of receipt of written confirmation of the decision.
Where the appeal is an appeal against dismissal, the appeal shall ideally be heard before the dismissal takes effect.
- 6.1.3 The appeal will normally be heard within fifteen working days from receipt of the appeal letter.
- 6.1.4 The Executive Director or his or her nominee shall arrange for the appeal to be heard by a panel of at least two officers, one of whom must be at the same or higher grade as the chair of the original panel. Neither shall be in the direct line management of the employee.

6.2 Common appeal conditions

- 6.2.1 The grounds of appeal should relate to one or more of the following:
 - a) **The procedure**
An appeal can be lodged on the grounds that the capability procedure was applied unfairly or inaccurately.
 - b) **The facts**
An appeal can be lodged where the employee believes that the facts of the case did not support the decision made; that the facts considered were not relevant; that the facts were not substantiated; or where there are new facts/evidence which needs to be considered that has come to light subsequent to the hearing
 - c) **The decision**
An appeal can be lodged where the employee feels that the sanction received is disproportionate to the charges found taking into account the evidence/mitigating circumstances presented.
- 6.2.2 The appellant will be given 5 working days notice of the appeal hearing along with any documents which management will present at the appeal. The appellant must provide their own documents within one working day of the hearing.
- 6.2.3 The panel will review whether the original decision was reasonable having reviewed the grounds for appeal. The Appeal Panel shall go into as much detail as they consider necessary in order to give a fair hearing to the appeal within the grounds of the appeal. The decision at appeal shall be either to uphold the original decision of the formal hearing, to issue a lesser sanction, or to overturn the original decision and impose no sanction. This decision shall be final and will be confirmed in writing.
- 6.2.4 Notes shall be taken at an appeal hearing and a copy provided to the appellant within 10 working days of the hearing.

7. Details of approval and variation process

7.1 Where the Council wishes to amend or terminate this procedure, it will consult with the relevant trade unions with a view to reaching agreement over the proposed amendment(s)/termination. This procedure may be amended or terminated by agreement with the relevant trade unions at any time. Where agreement has not been reached with the relevant trade unions arising from consultations, the Council reserve the right to implement its proposed amendment(s)/termination by giving one months notice to employees of its proposal(s).

7.2 This policy is approved and signed by:

Nana Amoa-Buahin
Divisional Director Human Resources

Jon Rogers (Branch Secretary – UNISON)
On behalf of Trade Unions