

Capability Procedure



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1. Scope

- 1.1 This procedure applies to all Hackney employees (except Chief Officers and school based staff, who have their own procedures).
- 1.2 The capability procedure applies where an employee consistently fails to meet performance standards due to their lack of ability, skill, or knowledge.

2. Operating Principles

The Council will:-

- ▶ Attempt to resolve problems informally and promptly
- ▶ Be consistent and treat like cases alike
- ▶ Inform employees of the problem and give them the opportunity to put their case (and improve)
- ▶ Allow employees to be accompanied to any formal meeting by a work colleague or Trades Union representative
- ▶ Attempt to mutually agree dates/times of meetings
- ▶ Give employees the right of appeal against a formal decision
- ▶ Keep records of meetings and share them with the employee, taking account of the need for confidentiality

3. The Procedure

- 3.1 The Council's capability procedure has six basic stages (see diagram 1):-

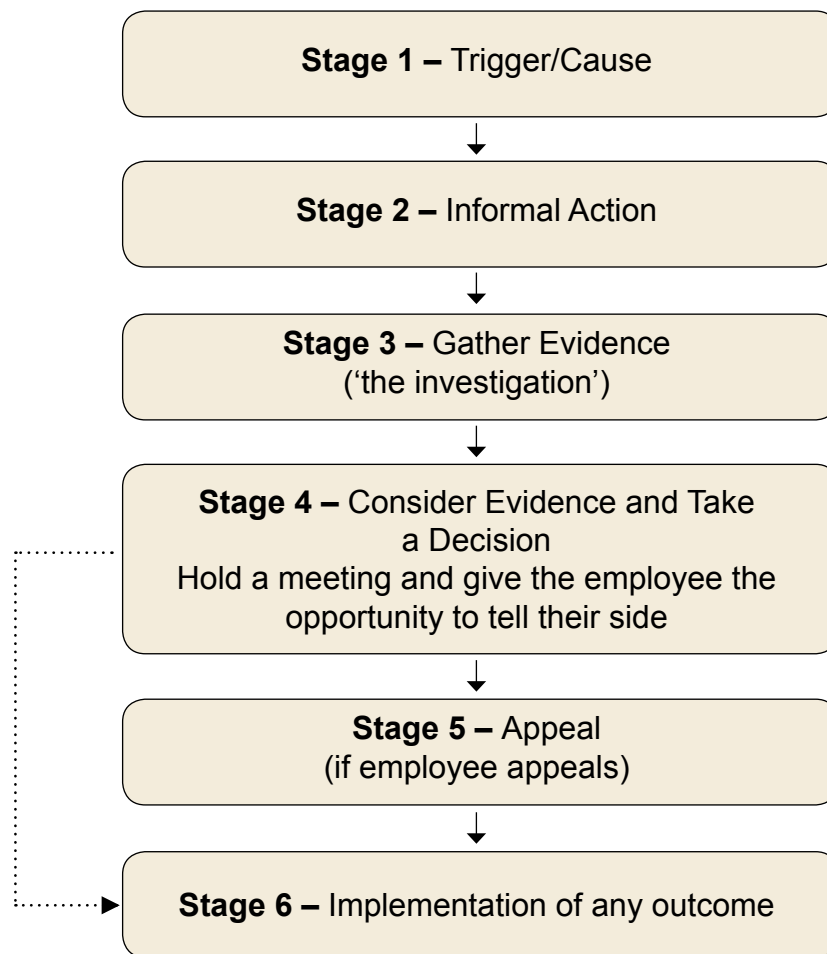


Diagram 1 (above): The capability procedure

4. Stage 1 – Trigger/Cause

4.1 The manager has concerns that the employee has failed to meet performance standards due to their lack of ability, skill, or knowledge.

4.2. Managers will:-

- ▶ **Notify the employee of the concern about their performance.**
It is important that the employee understands their manager's concerns and has the opportunity to respond.
- ▶ **Advise the AD HR&OD and relevant Corporate Trade Union Representative** before taking action against a trade union official

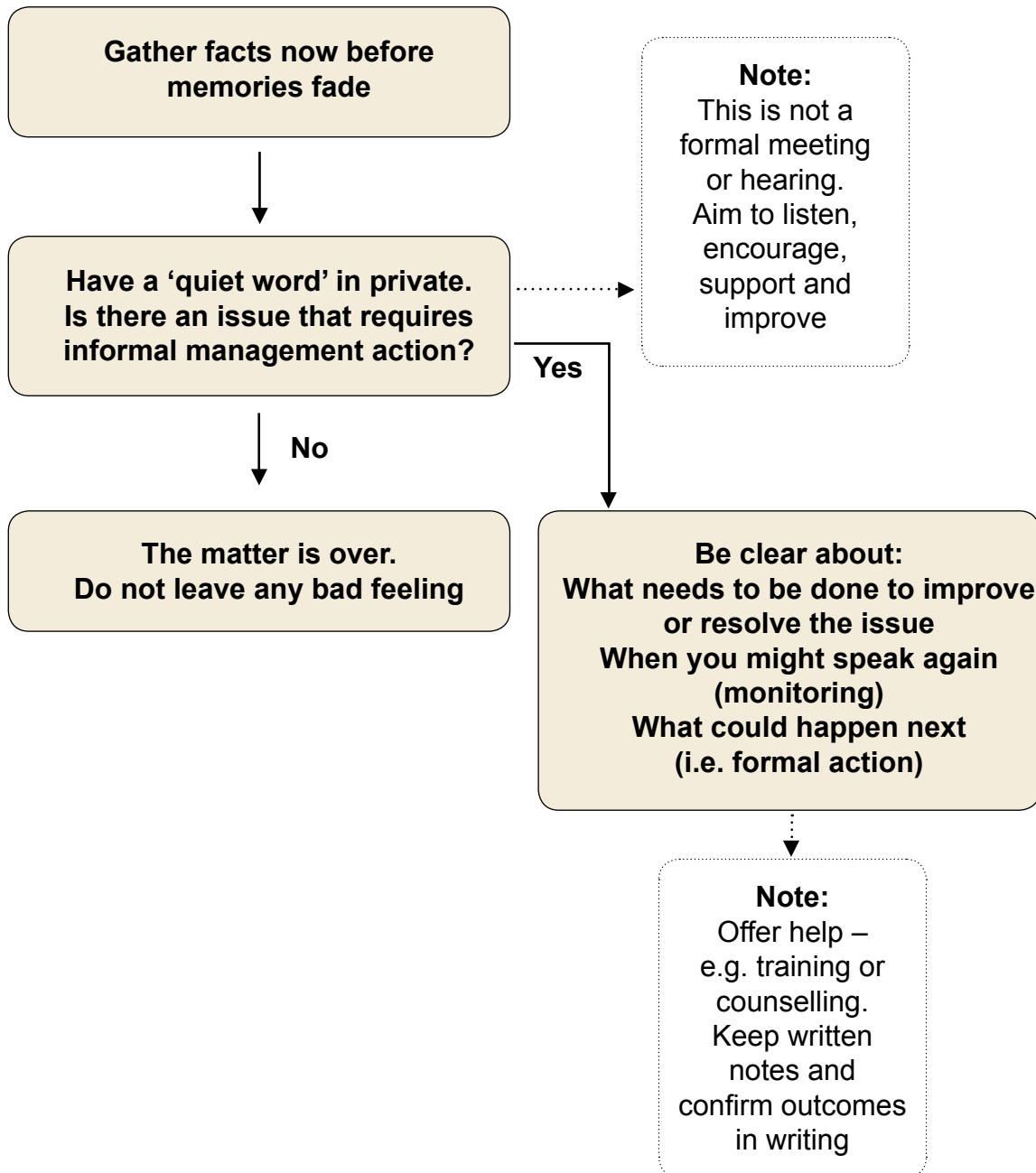
5. Stage 2 – Informal Action

5.1 It is always best to deal with matters informally where possible. Guidelines for informal action are at Appendix 1.

Managers should try to deal with performance issues as part of their day-to-day management and supervisory duties (for example by setting standards so that the improvement needed in performance is clear).

5.2. The process for informal action is shown in the flow-chart below:-

Diagram 2 (below): Flow-chart for informal action



5.3 The right for employees to be accompanied does not apply at informal meetings (which have the same status as normal supervision meetings). Similarly, an HR representative will not accompany managers.

6. Stage 3 – Gather Evidence

6.1 The manager will normally gather evidence of the employee's alleged poor performance.

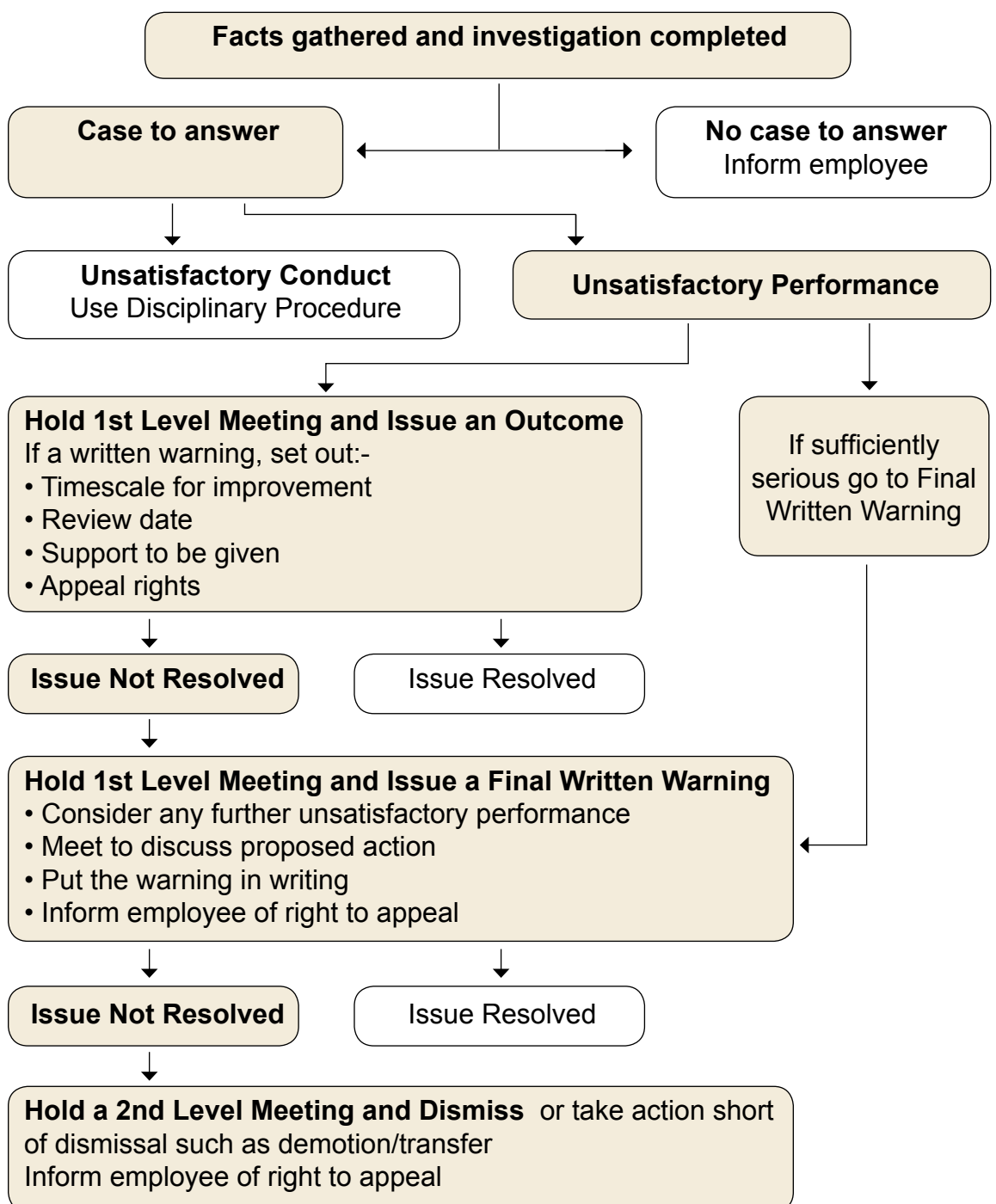
6.2 Where an employee's performance is likely to constitute negligence, this should be regarded as misconduct and the Council's disciplinary procedures will apply.

7. Stage 4 – Consider Evidence and Give the Employee an Opportunity to Respond

7.1 If the manager decides that there is a capability issue that cannot be dealt with informally, the manager will:-

- ▶ invite the employee to a formal meeting where the evidence is presented; and
- ▶ provide the employee with the opportunity to respond and present their case.

Diagram 3 (below): Taking a capability decision



7.2 Where a grievance is submitted during the capability procedure, the manager will discuss the options with Directorate HR. Normally one of the following will apply:-

- (a) **The grievance will be added to the performance matter under consideration.** This would be appropriate where the grievance relates to the matter (e.g. it relates to the procedure, amounts to mitigation, or is put forward as part of an employees defence or appeal) or
- (b) **Progress both matters separately.** This would be appropriate where the grievance is not related to the matter under consideration.

Diagram 3 (above) summarises the decision making process.

7.3 There are two levels of formal meeting available with dismissal available at a 2nd level meeting. The table below summarises the sanctions available:

Meeting	Options Available
1st Level Meeting	Extended monitoring Standard setting Written warning Final written warning Transfer/Demotion Redeployment
2nd Level Meeting	All 1st level outcomes and dismissal
Appeal	Confirm original decision or Substitute a different decision

7.4 Normally, a 1st level meeting will be held, except where:-

- ▶ the employee's performance remains unsatisfactory despite earlier warning/s (issued at one or more 1st level meetings); or
- ▶ the alleged poor performance is so serious that it constitutes negligence and the disciplinary policy applies.

7.5 **At least 10 working days** before either a 1st or 2nd level capability meeting, the manager will:-

- ▶ invite the employee to a capability meeting in writing, stating the venue, date and time of the meeting;
- ▶ state the specific concerns about poor performance in writing;
- ▶ state that the employee must take all reasonable steps to attend the meeting;
- ▶ confirm the employee's right to have a trade union representative or work colleague present at the meeting

7.6 **At least 3 working days before the meeting**, the employee will:-

- provide the manager with any evidence they propose to refer to at the meeting;
- provide the manager with the names of any witnesses they intend to call at the meeting

7.7 Employees may request a cancellation or postponement of the meeting at least 3 working days before the meeting. The meeting will normally be reconvened within 5 working days of the original date and subsequent requests for postponement will not normally be accepted unless due to ill health.

7.8 The following will attend formal meetings:-

Participants	Function
Decision-making manager who is also the Chair.	<ul style="list-style-type: none"> • To hear the case and take a decision on its outcome • To steer the parties through the proceedings • To ensure that everyone has the opportunity to present the arguments of their case • To ensure that the proceedings are cordially conducted
HR representative	<ul style="list-style-type: none"> • To provide HR advice
The employee (may be accompanied by Trade Union representative or colleague)	<ul style="list-style-type: none"> • To present their case and/or to respond to the manager's concerns
Witnesses (if applicable)	<ul style="list-style-type: none"> • To provide statements of evidence • May be called by either side
A note taker	<ul style="list-style-type: none"> • To keep a record of the meeting

7.9 The capability meeting will operate as follows:-

The decision-making manager will:-

- ▶ introduce those present, state the purpose of the meeting and outline its format;
- ▶ check that the participants have received all relevant documentation;
- ▶ consider any preliminary points (e.g. relating to procedural matters).

The decision-making manager will:-

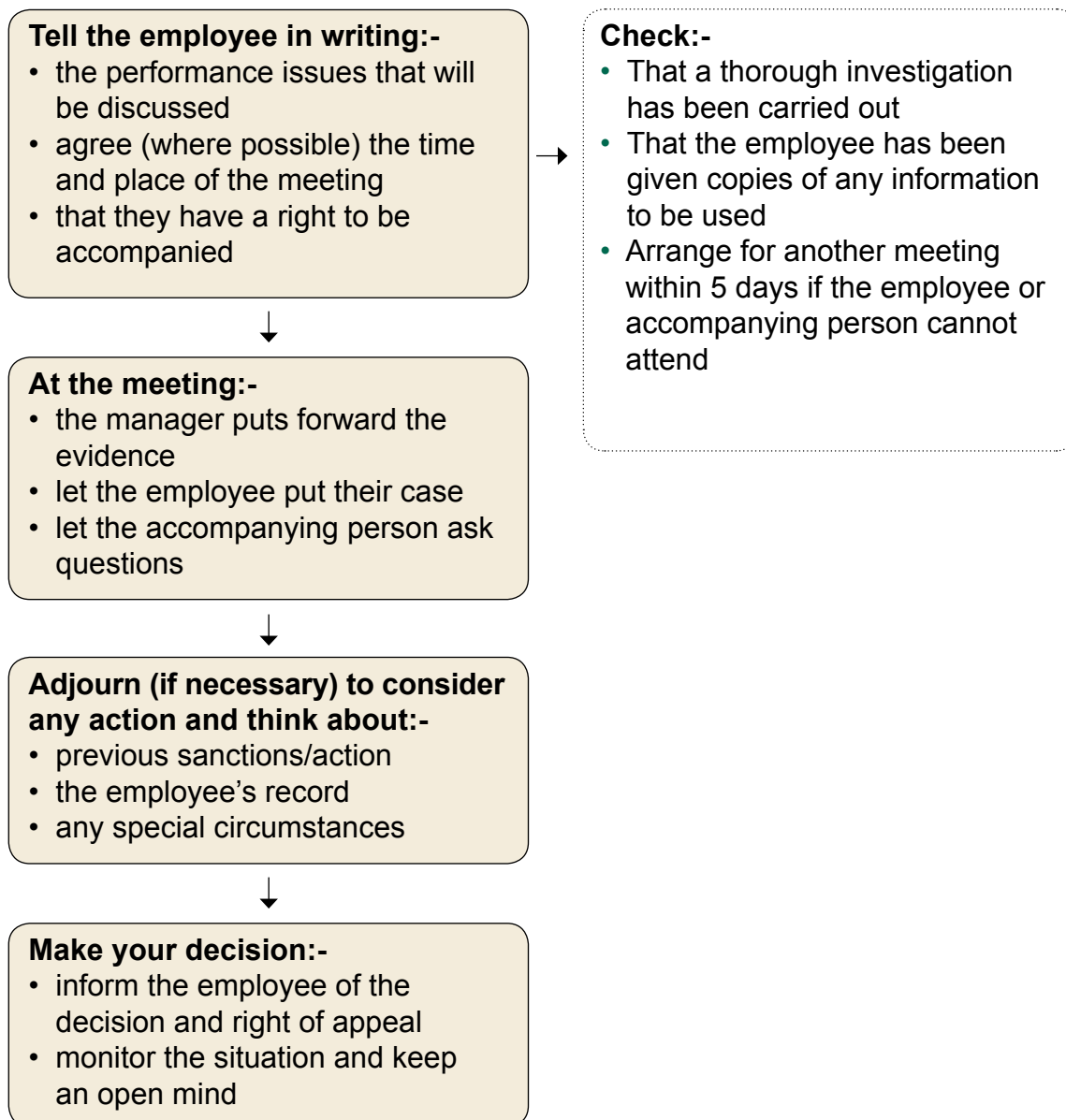
- ▶ present their concerns about the employee's performance at 1st level meetings; or
- ▶ hear the employee's manager's concerns about the employee's performance at 2nd level meetings

The Chair will:-

- ▶ allow all parties to ask questions of the officer presenting the case and of any witnesses;
- ▶ ask both sides to briefly summarises their cases, drawing out the key points
- ▶ take a decision based on the evidence provided; or
- ▶ if necessary, adjourn the meeting to gather further information and/or to make a decision.

A summary of the process for formal meetings is outlined below:-

Diagram 4 (below): Summary of Process for Capability Meetings



7.10 Decisions and outcomes must be proportionate to the seriousness of the performance capability issue under consideration. The options available to the decision maker at each stage are summarised below:-

7.10.1 1st Level Meeting Outcomes

Standard Setting

The manager will consider formal standard setting where the employee's performance does not warrant a written warning but does require formal remedial action. The manager will state in the standard setting letter:-

- ▶ The standard required
- ▶ The improvement required
- ▶ The monitoring period
- ▶ The support the manager will provide (training, counselling etc.)
- ▶ The dates of regular review meetings during the monitoring period
- ▶ A warning that if improvement is unsatisfactory, then management may take further formal action at either a 1st or 2nd level meeting

The letter will be kept on the employee's file. After one year and subject to satisfactory performance, the letter will be disregarded for the purposes of any future formal action.

Written Warnings

The Chair will consider issuing a written warning where the employee has substantially failed to meet the required standard.

The Chair will consider issuing a final written warning where:-

- ▶ the performance remains unsatisfactory; or
- ▶ it is a first act of serious sub-standard performance but does not warrant dismissal

The warning will clearly state:-

- ▶ the standard of performance required
- ▶ the improvement required
- ▶ that if the improvement is not achieved, then further formal action may be taken, including dismissal
- ▶ the precise expiry date of the warning
- ▶ the employee's right of appeal

Written warnings remain live for 1 year. Final written warnings remain live for 2 years. This means that if an employee's performance does not improve, managers can take account of previously issued warnings where they are still live and relevant. All expired warnings will remain on an employee's record.

In exceptional circumstances, final warnings may be extended beyond the normal 2-year period (including indefinitely).

Warnings for unrelated matters will not be taken into account.

A Transfer

The manager may consider a transfer at a meeting where:-

- ▶ the manager decides to issue a warning for sub-standard performance; **and**
- ▶ the employee's performance is unlikely to substantially improve after a formal review period; **and**
- ▶ the proposed transfer is at the same grade or at a lower grade (demotion with no salary protection); **and**
- ▶ the transfer is an alternative to the setting of a formal review period; **and**
- ▶ the employee agrees to the transfer with either a written or final written warning; **and**
- ▶ there is a suitable job immediately available; **or**
- ▶ the alternative outcome is dismissal (at 2nd level meeting only)

The employee will be subject to a 6-month trial period in the new post. If at the end of the trial period the employee is not confirmed in the new post or for any other reason, the manager may reinitiate the capability process from the point at which it was adjourned.

The Chair of the panel will place a copy of the warning and details of the transfer on the employee's personal file. Subject to satisfactory performance in the new post, the warning will be disregarded for the purposes of any future formal action.

7.10.2 2nd Level Meeting Outcomes

All the 1st level outcomes are available to the Chair of the 2nd level meeting. In addition, the Chair may decide to dismiss an employee.

Dismissal

The Chair of the panel will consider dismissal with contractual notice where conduct remains unsatisfactory despite an earlier unexpired warning.

A single act of sub-standard performance that was so serious that it constitutes negligence may result in dismissal without notice (i.e. summary dismissal). Negligence is handled using the disciplinary procedure.

- 7.11 Any decision arising from a formal meeting will be confirmed in writing to the employee within 10 working days of the meeting. If the decision was not given at the meeting, the date of the decision will be the date of the letter stating the decision.

8 Stage 5 - Appeal

8.1 Employees have the right of appeal (normally within 10 working days of receiving the letter confirming the decision) on one or more of the following grounds: -

- ▶ the evidence did not support the conclusions reached at the formal meeting
- ▶ the sanction was too severe given the circumstances of the case
- ▶ the procedure was not followed properly
- ▶ new evidence has emerged which the employee was unable to produce at the earlier meeting and which affects the final decision or sanction (full details must be given)

8.2 Appeals against dismissal will normally be heard by a 2nd tier manager. Appeals against action short of dismissal will normally be heard by a 3rd tier manager.

8.3 Normal timescales for appeals are:-

Task/Activity	Timescale
Employee appeals	Normally within 10 working days of receiving the letter confirming the decision
Hear the appeal	Normally 20 working days (from receipt of the letter stating grounds)
Appeal Chair invites the employee to the appeal	At least 10 working days before the appeal
Appeal Chair forwards the documentation considered by the original decision-making manager to the employee	At least 10 working days before the appeal
Employee submits new evidence to the Appeal Chair (exceptionally, normally new evidence will have been submitted with the Appeal grounds)	At least 10 working days before the meeting date
Employee requests cancellation or postponement of meeting with good reason. (If there's not a good reason the appeal will go ahead in their absence)	Extensions normally no more than 5 working days.
Employee requests an alternate date as their chosen companion (Trades Union Representative or work colleague) is unable to attend.	Must be a mutually convenient date. Extensions normally no more than 5 working days.
Dispatch of the decision/outcome letter	Within 10 days of completion of the meeting

In cases where new evidence requires additional investigation, the above timescales may not be achieved.

Employees must respond to requests from the Appeal Chair for meetings and/or information within 5 working days.

8.4 The options available to the Appeal Chair are to:-

- ▶ Confirm the original decision; or
- ▶ Substitute a different decision:-
 - o that there should be no formal action; or
 - o where a different level of warning/sanction is given, it will be at a lower level than the original decision

9 Stage 6 – Implementation of Outcomes

- 9.1 The primary responsibility for implementing the decision lies with the decision-maker. Where the decision-maker is not the line manager, the decision-maker must ensure that the line manager understands the decision and what is required to implement it and by when.

10 Monitoring of Implementation

- 10.1 The implementation of this policy will be subject to review and monitoring to ensure that there is no adverse impact on people due to their age, disability, ethnicity, gender, sexual orientation or religion/belief.

Guidelines for Informal Action

Informal Action

- 1 Informal action is appropriate for minor or emerging performance issues and/or where there are extenuating circumstances (e.g. the employee feels to be under substantial personal pressure).
- 2 Managers should take informal action to resolve minor performance issues through advice, counselling and standard setting. Managers should meet with the employee and:-
 - ▶ State the purpose of the meeting
 - ▶ Refer to any examples of poor performance and identify any impact on the service or colleagues
 - ▶ Invite a response
 - ▶ Sensitively ask questions to determine what to do next (e.g. around extenuating circumstances)
 - ▶ State what improvement is needed
 - ▶ Set dates for informal monitoring (e.g. 1-3 months with dates for regular feedback) and/or the date of a review meeting
 - ▶ Provide reasonable support (e.g. training, coaching)
 - ▶ Tell them that if performance does not improve, formal action will be taken
 - ▶ Record the meeting on the employee's supervision file and give a copy to the employee
- 3 Review meetings: Managers should meet with the employee regularly to provide ongoing feedback and support. Monitoring periods can be extended for up to one month where there is a reasonable prospect of the required standard being achieved.
- 4 Final meeting. Managers should meet the employee and:-
 - ▶ If there is sufficient improvement, record this on the supervision file and close the matter
 - ▶ If there is no improvement, note this on the supervision file and initiate formal action

Authority to Act and Relationship to Associated Processes

Stage	Grievance	Misconduct	Capability
Trigger/Cause	Employee complains and indicates that action is required	Alleged breach of Code of Conduct or Council rules	Manager concern about sub-standard work/ performance
Informal Action	Line manager	Line manager	Line manager
Suspension or Transfer	N/A	4th tier – Suspension or temporary transfer	4th tier - Transfer
Gather Evidence	Line manager or Investigating officer	Line manager or Investigating officer	Line manager
Consider Evidence	Line manager Upheld Partly upheld Not upheld	Line manager Allegation not found Standard setting Written warning Final written warning	Line manager: Satisfactory Improvement Extend monitoring Standard setting Written warning Final written warning Transfer/Demotion
(ii) 2nd Level Meeting	Not applicable	4th tier (plus independent manager at 4th tier where outcome may be dismissal) All 1st level outcomes plus Dismissal Summary dismissal Transfer/Demotion	4th tier All 1st level outcomes plus:- Dismissal
Appeal (i) First & Second level meeting (No dismissal)		3rd tier: Uphold appeal Confirm original decision Substitute new decision	
(ii) 2nd Level meeting (Dismissal)	Not applicable	2nd tier, (a) Uphold appeal, (b) Confirm original decision, (c) Substitute new decision	
Implement Outcome		Line manager	

