



CAPABILITY PROCEDURE

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DATE OF IMPLEMENTATION

This is a new procedure that will apply to all Capability cases from Tuesday 1st November 2005. (1st Review June 2007)

CAPABILITY PROCEDURE

1 Introduction and Aims

- 1.1 **Purpose** - This procedure is designed to provide a framework for dealing with capability matters fairly and equitably where an employee's performance falls short of the required standards.
- 1.2 **Line Management responsibilities** - Managers are responsible for making clear to employees the performance standards required of them, providing appropriate support to help employees maintain good performance and monitoring their performance. The staff appraisal process and ongoing supervision also feed into the overall performance monitoring framework. Reasonable time off will be provided to the employee and his/her representative to meet to prepare for any formal meetings, prepare witnesses for the employee case subject to clearance in advance with line management.
- 1.3 **Employee responsibilities** - Employees are responsible for achieving and maintaining the required work performance standards and for cooperating with the implementation of this procedure eg taking all reasonable steps to attend any scheduled Capability review meeting(s).
- 1.4 **Examples of lack of capability** - Appendix 1 outlines examples of lack of capability, and is not exhaustive.
- 1.5 **Employee representation** – Trade Union (TU) representatives or workplace colleagues are granted reasonable time off within the appropriate sections of this procedure to represent staff who make this request.
- 1.6 **Communication of this procedure** – Current employees will be informed about this procedure and new employees will receive details of this procedure during their induction and ongoing supervision meetings as and when appropriate. It is also available from Human Resources and posted on the intranet. A full copy of the procedure is also available on request.

2 Principles – based on ACAS guidance

Line managers applying this procedure will;

- Use the procedure primarily to help and encourage employees to improve their performance, rather just as a way of imposing a punishment
- Inform the employee of the concerns about their performance, and provide them with an opportunity to state their case before decisions are reached
- Allow employees to be accompanied at formal Capability review meetings
- Ensure that capability action is not taken until the facts of the case have been established and the action is reasonable in the circumstances, taking account of any mitigating circumstances and/or relevant medical or other specialist advice (e.g. Corporate Diversity team) and/or the need to make reasonable adjustments as required by the Disability Discrimination Act (DDA)
- Give the employee a written explanation for any disciplinary action taken, ensure that the employee is made aware of the improvement that is expected and confirm her/his right of appeal against any sanction that is imposed

- Deal with issues as thoroughly and promptly as possible
- Act consistently, whilst having regard to the individual circumstances of the case
- Recognise the statutory duties to deliver quality services to customers through its employees (which duties include child protection and services to vulnerable adults)

3 Scope

- 3.1 **Eligibility** – This procedure applies to all employees except the Chief Executive & Directors, school based staff, centrally based teaching staff and employees on probation, who have their own procedures.
- 3.2 **Issues not covered by this procedure** - This procedure does **not** apply to issues of misconduct or attendance, which are covered in the Discipline and Attendance procedures.
- 3.3 **Professional standards** - Where professional standards of performance exist these will be taken into account in applying these procedures.
- 3.4 **Job titles or roles** - Job titles are not part of this procedure. It is management's responsibility to determine who has authority to implement this procedure.

4 Standards in applying this procedure

4.1 Line managers applying this procedure should:

- Outline to the employee clear objectives and the performance standards required to achieve satisfactory performance, monitor performance and then, where appropriate, clarify any specific areas of under performance
- Investigate any under performance issues fully and speedily
- Give the employee the opportunity to respond to comments and offer explanations for their under performance, providing access to relevant documentation to support the concerns
- Provide a reasonable time period to enable performance to improve to the required standard
- Specify to the employee the course of action and the specific steps s/he needs to take to improve performance through a written Improvement Action Plan (IAP), linked to the employee's staff appraisal form as appropriate
- Provide reasonable support, training and assistance to help the employee overcome under performance
- Advise the employee of the possible consequences of not achieving the required standards within the agreed timescales
- Record and communicate the progress made by the employee
- Provide particular support and assistance to any employee with disabilities or specific needs and make any necessary reasonable adjustments as required by the DDA
- Use discretion to recommend counselling via the confidential staff EAP service and support for any employee who is subject to an investigation under the Children Protection and Vulnerable Adult investigation processes

- Seek to reduce the likelihood of dismissing an employee who, with appropriate support, can improve her/his performance
- Have regard to the Equality and Diversity policy
- Maintain confidentiality and privacy at all times
- Maintain appropriate records, having regard to such issues as the Data Protection Act 1998

5 Records

5.1 Records are confidential and are kept within the requirements of the Data Protection Act 1998, which allows access to records by employees. Documents relating to child protection and other vulnerable adult investigations will be retained, together with a written record of the outcome of the investigation. Where an employee receives a warning for child protection or vulnerable adult issues, these will remain on personal files in accordance with the Local Authority Retention of Records Guidance.

5.2 Records will include:

- The concerns regarding the employee's performance
- The employee's explanation
- The evidence of poor performance
- The Improvement Action Plan, which is linked to the employee's staff appraisal form as appropriate
- The decision letter(s)
- Whether an appeal(s) was lodged
- The outcome of the appeal(s)
- Any grievance(s) raised during the Capability procedure
- Any subsequent developments.

5.3 Details of formal capability documentation are kept by HR on a confidential basis on the personal file.. When satisfactory performance has been attained and sustained to the designated timescale, they are destroyed. Where an allegation of poor performance is upheld the details of the decision are retained until the warning period has expired – unless paragraph 5.1 above applies.

6 Authority to take action and to conduct appeals – includes agency staff managing Council employees

NOTE – This procedure necessarily uses the generic terms 'line manager' and 'line manager's manager' – and each department will designate specific managers who are delegated to undertake these roles, based on the staff appraisal arrangements that applied at Tuesday 1st November 2005.

6.1 The Council has delegated authority to Chief Officers to specify the levels of management to undertake action regarding Capability. The specification will be in accordance with this framework.

6.2 The line manager is responsible for conducting a Capability Stage I review, which is informal.

- 6.3 The line manager's manager is responsible for conducting a Capability Stage II review if there is insufficient improvement during the specified Capability Stage I performance review monitoring period. S/he may authorise a written warning at any such Capability Stage II review meeting.
- 6.4 Where a written sanction is imposed following a Capability Stage II review, there is a right of appeal to a Head of Service (HOS).
- 6.5 The HOS is responsible for conducting a Capability Stage III review if there is insufficient improvement during the specified Capability Stage II performance review period, and for authorising either a written warning or final written warning or a dismissal decision, as appropriate.
- 6.6 Where there is either a written sanction or a dismissal decision by a HOS following a Capability Stage III review there is a right of appeal to the Director.
- 6.7 Where the employee reports to a HOS, the HOS is responsible for conducting a Capability Stage I review. The Director is responsible for conducting either a Capability Stage II or Stage III review if performance remains unacceptable during or after the respective Capability Stage I and Stage II review periods. The right of appeal against any subsequent formal sanction(s) and/or a dismissal decision is to a Director who has not been involved with the case, as delegated by the Chief Executive.
- 6.8 Where an employee is a HOS, her/his Director conducts the Capability Stage I review. If there is insufficient improvement during the Capability Stage I performance review period, the Director presents her/his case to a Director who has not been involved with the case, as delegated by the Chief Executive. The nominated Director will then conduct a Capability Stage II review and, where appropriate, a consequent Capability Stage III review. The right of appeal against any subsequent formal sanction(s) and/or a dismissal decision is to the Chief Executive, who may delegate this to a Director who has not been involved with the case.

NOTE - Where appropriate, the line manager concerned makes arrangements for the release of any witnesses and arranges a note taker for any appropriate formal Capability hearing and/or appeal hearing. (For confidentiality reasons the note taker will be a Council employee who is not related to the parties concerned)

7 The role of Human Resources (HR)

- 7.1 To assist all parties to identify the full facts of the case and advise the Council's officers on appropriate action(s) at all stages of the procedure.
- 7.2 To seek to ensure fairness and consistency in the application of the procedure, and advise on the HR implications of relevant codes of practice.
- 7.3 To maintain confidential files regarding capability.
- 7.4 To assist the line manager in redeployment matches.
- 7.5 To review capability monitoring data on a regular basis with Staff Side.

7.6 To attend all formal Capability Stage II and Stage III review meetings and/or any appeal hearing when requested by the line manager concerned, and confirming the administrative arrangements for such meetings eg the date, time, venue and circulation of documentation. (However, the line manager concerned is responsible for arranging a note taker, as appropriate). The same HR representative can attend all formal meetings unless a conflict of interest exists.

8 Investigation of Capability issues – guidance

8.1 Where performance is below standard, the line manager considers the underlying issues.

8.2 Where the employee's poor work performance seems attributable to misconduct, the **Discipline** procedure should be followed instead.

8.3 Where **health** issues may be an underlying cause of poor performance, the line manager requests HR to obtain appropriate medical advice from the Occupational Health Service (OHS). (HR is available to advise on the medical referral process) Subject to such advice from the OHS, and from HR as appropriate, the line manager then determines whether the work performance concerns should be progressed through this Capability or Redeployment procedure or through the Attendance procedure instead.

8.4 Where there has been a recent reorganisation, use of changed technology, or changes in working practice, the line manager seeks to provide appropriate support to enable the employee to understand and achieve new working methods.

8.5 Where changed service priorities result in changed work targets and objectives, the line manager considers the impact of these on current workloads, targets and objectives. The manager agrees with the employee any revised work targets and objectives and/or improved resources and /or any new learning objectives, updating the staff appraisal form as appropriate.

8.6 It is possible that the employee has concerns within the workplace affecting her/his performance e.g. if s/he considers that her/his performance is being adversely affected by harassment, bullying and/or victimisation s/he may elect to progress her/his concerns through the (separate) Dignity at Work procedure. In such cases the line manager reviews the impact of any such issue(s) on the employee's work performance before taking any formal action within this Capability procedure. It is also possible that the employee has problems outside the workplace which are affecting her/his performance and in such cases the line manager should consider the impact of any such issue(s) on the employee's work performance. The line manager may also elect to facilitate access to other sources of support for the employee e.g. Employee Assistance Programme (24 hour confidential counselling) and/or consult the OHS for guidance.

9 Capability Stage I review (conducted by the line manager)

- 9.1 The line manager's primary objective is to focus attention on the key performance issues, encourage and support the employee to improve her/his work performance to reach the required standards, establish the key causes of concern and explore possible remedies.
- 9.2 This Stage I discussion is normally held between the line manager and employee alone – as this will enable the line manager to discuss openly her/his concerns about the employee's performance and give the employee an opportunity to comment and offer explanations. However, the employee may elect to request that this Capability Stage I review meeting is postponed – to enable her/him to be accompanied by a TU representative or workplace colleague. In such circumstances, the Stage I review meeting is held on a mutually convenient date as soon as is practicable, with an HR representative in attendance if requested by the line manager.

Confirming the outcome

- 9.3 Following the Stage 1 review discussion outlined in paragraphs 9.1 and 9.2 above, any required performance standards and improvements are outlined in an Improvement Action Plan (IAP). A specimen example of an IAP is outlined in Appendix 2.

The IAP is in writing and:

- Makes clear the nature and extent of the improvement required
- Specifies clear objectives
- Sets clear timescales for review, detailing the date and the time of the next performance review meeting. (The length of the performance review period is dependent on the nature of the job, comprising a minimum of four weeks but normally not exceeding three months).

- 9.4 Any concerns raised by the employee are recorded on the IAP. The IAP is signed and dated by both the line manager and the employee.
- 9.5 The employee's staff appraisal form may **also** be revised to ensure that it is consistent with the IAP regarding such issues as current/new objectives, targets and/or learning activities. The revised staff appraisal form is signed and dated by both the line manager and the employee.

Performance monitoring review process

- 9.6 During the scheduled performance review period arising from paragraph 9.3 above, the line manager monitors the employee's performance, provides guidance and support and ensures that the performance review is fair and objective.
- 9.7 At any subsequent performance review meeting(s) the line manager advises the employee whether or not her/his work performance has improved sufficiently, based on the IAP and/or staff appraisal form as appropriate.

- 9.8 If the employee's work performance improves during the performance review period to the required standard, the manager informs the employee of the satisfactory outcome of the Capability Stage I review - and confirms this in writing within five working days of the performance review meeting.
- 9.9 If the performance does not reach the required standard by the end of the performance review period, the line manager meets the employee to explain the shortcomings and allows the employee to respond. If there is a justifiable reason, the line manager may decide to extend the performance review period. However, if the manager considers that the employee has failed to reach the required standard without justifiable reason and/or that the poor performance standards are likely to continue the matter is referred to a formal Capability Stage II review.
- 10 Capability Stage II review: - conducted by the line manager's manager – (hereafter called the Stage II review manager)**

Arrangements for the Capability Stage II review meeting

- 10.1 A Capability Stage II review meeting is conducted by the Stage II review manager. The focus is to assist the employee to improve her/his performance. At the same time the employee needs to be aware that continued poor performance is not acceptable, and that ultimately her/his job could be at risk.
- 10.2 Where a Capability Stage II review is necessary, the employee, and her/his representative as appropriate, are consulted over the date of the meeting and given ten working days notice of it. S/he is informed in writing of the reason(s) for the review and provided with any supporting evidence, which forms the basis of the Capability Stage II review meeting.
- 10.3 The employee is allowed one change to the agreed Capability Stage II review meeting date if either s/he, or her/his representative, is unable to attend for reasons which were unforeseen when the meeting was first arranged. Any such reconvened meeting must take account of the availability of all parties and be within five working days or by mutual agreement. (Sickness will only be treated as a reason for non-attendance where the health condition of the employee is such that s/he cannot attend the hearing or follow the proceedings).
- 10.4 The employee must provide details of any supporting documentation and/or the names of any witness(es) at least two working days in advance of the Capability Stage II review meeting. The Stage II review manager will arrange for the release of any such witness(es).

Conduct of the initial Capability Stage II review meeting

- 10.5 The employee may present relevant documents in support of her/his case at the meeting and respond to the alleged performance issue(s), including any mitigation.
- 10.6 The Stage II review manager conducting the Capability review:
- Fully investigates the evidence presented, having regard to the latest IAP and as appropriate, the latest staff appraisal form

- Considers whether the current support and training provided are the most appropriate to improve performance, in consultation with HR and the Learning and Development section as appropriate
- Listens to the employee's views
- Considers whether the employee's work performance is achieving the required standards
- Explores other actions in conjunction with the employee, which may include obtaining advice from the OHS, temporary duties, retraining and/or other learning and development activities
- Where appropriate, sets clear timescales for any Stage II performance review period, detailing the date and the time of the next review meeting. (The length of the performance review period is dependent on the nature of the job, normally comprising a minimum of four weeks but not exceeding three months)
- Determines whether the employee's current IAP and/or staff appraisal form needs to be updated and, if so, outlines the proposed changes – with provision for the employee to record any issues or concerns on the IAP and/or staff appraisal form, as appropriate.

10.7 The line manager may consider that redeployment to an alternative role is appropriate. In such cases the timescale for finding alternative employment for the employee runs in parallel with the performance review period. Advice should be taken from HR on the potential availability of suitable alternative work, taking into account the documented capability issues. If performance remains unsatisfactory at the end of the Stage II performance review period and alternative work is not found within that time, a Capability Stage III review is arranged – as outlined in section 11 below. Where alternative work is found, offered and accepted, the rate of pay, grade and other conditions are those applicable to the new post – and HR will advise as appropriate.

Communicating the outcome of the initial Capability Stage II review

10.8 The outcome of the Capability Stage II meeting outlined in paragraph 10.6 above, is confirmed in writing within a maximum of five working days of the meeting. The decision letter explains the nature of the performance concerns, the findings, the improvements required during the specified performance review period, and the likely consequences if the specified performance standards are not achieved during the performance period eg a possible written warning. (Where appropriate, the employee is informed of any discussions/decisions relating to a possible alternative role, as outlined in paragraph 10.7 above)

Performance monitoring review process

10.9 Where a performance review period has been set under paragraph 10.6 above, the Stage II review manager monitors the employee's performance, provides guidance and support and ensures that the performance review against the Capability Stage II IAP and/or the updated staff appraisal form is fair and objective.

10.10 At the end of the scheduled performance review period the Stage II review manager reconvenes the Capability Stage II performance review meeting to assess progress against the updated IAP and/or staff appraisal form and to determine whether the employee's work performance has improved to the

specified performance standards – with the arrangements for the reconvened meeting based on those outlined in paragraphs 10.2 – 10.5. (The Stage II review manager may decide to bring forward the performance review meeting to an **earlier** date if there are continued concerns about the employee’s performance). The format of the discussion is similar to that outlined in paragraph 10.6 above.

10.11 Based on the discussions at the performance review meeting outlined in paragraph 10.10 above, the Stage II review manager determines whether the employee:

- Has attained the required performance standards – see paragraph 10.12 below or;
- Has failed to reach the required performance standards, but with justifiable reason – see paragraph 10.13 below or;
- Has failed to reach the required performance standards without justifiable reason, and considers that the poor standards are likely to continue – see paragraph 10.14 below

Communicating the outcome

10.12 If the employee’s work performance improves during the performance review period to the required standard, the Stage II review manager informs the employee of the satisfactory outcome of the Capability Stage II review - and confirms this in writing within five working days of the end of the performance review period.

10.13 If the employee’s work performance has either failed to improve or has not improved to the required standards but with justifiable reason, the Stage II review manager may decide to extend the performance review period – and s/he informs the employee of the performance standards that must be attained, the extended timescale for improvement and any support that may be made available to the employee to help her/him achieve the required performance standards.

10.14 If the employee’s work performance has failed to reach the required standards without justifiable reason the Stage II review manager may decide to give a written warning as outlined in paragraph 10.15 below.

10.15 Where incapability and/or continued under performance is determined at Stage II, the following sanction may be imposed:

- A written warning, which will be ‘spent’ after 6 months

This applies where performance has not improved to the specified standards within the duration of the Capability Stage II review period. The written warning confirms that a final written warning may occur if there is a failure to improve performance to the required standards.

Where a written warning is imposed the employee is advised of her/his right of appeal - as outlined in as outlined in paragraph 12.1 - 12.4 below.

10.16 Subject to the employee's performance standards during the period of any written warning, the Stage II review manager may then decide to refer the matter to a formal Capability Stage III review meeting which will be conducted by the HOS – and the employee will be informed in writing to this effect.

10.17 Where the Stage II review manager considers that redeployment to an alternative role may be appropriate, s/he considers the principles and process outlined in paragraph 10.7 above.

11 Capability Stage III review - normally conducted by the HOS (but see NOTE below)

NOTE – Paragraph 6.7 outlines the arrangements to be applied where the employee concerned reports to a HOS, and paragraph 6.8 outlines the arrangements for a HOS.

Arrangements for, and the conduct of, the Capability Stage III review meeting

11.1 If the employee does not meet the required performance standards following the issue of a written warning a Capability Stage III review meeting is conducted by the HOS (or Director as appropriate). The arrangements for this meeting are made as outlined as in paragraphs 10.2 - 10.5 above.

11.2 The HOS (or Director as appropriate) conducting the Stage III Capability review:

- Fully investigates the evidence presented, having regard to the latest IAP and, as appropriate, the latest staff appraisal form
- Considers whether the current support and training provided are the most appropriate to improve performance, in consultation with HR and the Learning and Development section as appropriate
- Listens to the employee's views
- Considers whether the employee's work performance has improved to the required standards
- Explores other actions in conjunction with the employee, which may include obtaining advice from the OHS, temporary duties, retraining and/or other learning and development activities
- Considers whether the employee's work performance has failed to reach the required standards and, if so, whether there are any justifiable reasons – in which case the HOS (or Director as appropriate) may decide to extend the performance review period (Any such extension will normally be for not less than four weeks and not more than three months)
- Considers whether the employee's work performance has failed to reach the required standards without justifiable reason – in which case the HOS (or Director as appropriate) may decide to give a final written warning.
- Where appropriate, sets clear timescales for the performance review period, detailing the date and the time of the next review meeting. (The length of the performance review period is dependent on the nature of the job, normally comprising a minimum of four weeks but not exceeding three months)

- Determines whether the employee's current IAP and/or staff appraisal form needs to be updated and, if so, outlines the proposed changes - with provision for the employee to record any issues or concerns on the IAP and/or staff appraisal form, as appropriate.

Communicating the outcome

11.3 Based on the discussions at the performance review meeting outlined in paragraph 11.2 above, the HOS (or Director as appropriate) determines whether the employee:

- Has attained the required performance standards – see paragraph 11.4 below or;
- Has failed to reach the required performance standards, but with justifiable reason – see paragraph 11.5 below or;
- Has failed to reach the required performance standards without justifiable reason, and considers that the poor standards are likely to continue – see paragraph 11.6 below

Communicating the outcome

11.4 If the employee's work performance improves during the performance review period to the required standard, the HOS informs the employee of the satisfactory outcome of the Capability Stage III review - and confirms this in writing within five working days of the end of the performance review period.

11.5 If the employee's work performance has either failed to improve or has not improved to the required standards but with justifiable reason, the HOS may decide to extend the performance review period – and s/he informs the employee of the performance standards that must be attained, the extended timescale for improvement and any support that may be made available to help the employee to achieve the required performance standards.

11.6 If the employee's work performance has failed to reach the required standards without justifiable reason the Stage II review manager may decide to give a final written warning as outlined in paragraphs 11.7-11.8 below.

11.7 Where incapability/underperformance is determined at Stage III, the following sanction may be imposed:

- A final written warning, which will be 'spent' after 12 months

This applies where performance has not improved to the specified performance standards within the duration of a written warning arising from a Capability Stage II review. It may **also** apply where there is **serious** incapability - even if this is the first occurrence.

11.8 The final written warning is confirmed in writing within 5 working days of the meeting – with the decision letter outlining the reasons for the decision and the employee's rights of appeal - as outlined in paragraphs 12.1 – 12.4 below. It also confirms that failure to improve performance levels within the scheduled performance review period outlined in the final written warning will result in a further Capability Stage III review meeting – which could result in the dismissal of the employee.

Subsequent performance monitoring review process during a final written warning period

- 11.9 During the period of the final written warning the HOS, in liaison with the line manager and the line manager's manager as appropriate, monitors the performance of the employee against the performance standards and timescales which have been set. At the end of the scheduled final written warning period, the HOS reconvenes the Capability Stage III performance review meeting to assess whether the employee's performance has improved to the required standards - with the arrangements for the reconvened meeting based on those outlined in paragraphs 10.2 – 10.5. (The HOS may decide to bring forward the performance review meeting to an **earlier** date if there are continued concerns about the employee's performance). The format of the discussion is similar to that outlined in paragraph 11.2 above.
- 11.10 Based on the discussions at the performance review meeting outlined in paragraph 11.9 above, the HOS determines whether the employee:
- Has attained the required performance standards – see paragraph 11.11 below or;
 - Has failed to reach the required performance standards, but with justifiable reason – see paragraph 11.12 below or;
 - Has failed to reach the required performance standards without justifiable reasons, and considers that the poor standards are likely to continue – see paragraph 11.13 below

Communicating the outcome

- 11.11 If the employee's work performance improves during the period of the final written warning to the required standard, the HOS informs the employee of the satisfactory outcome of the Capability Stage III review - and confirms this in writing within five working days of the end of the performance review period.
- 11.12 If the employee's work performance has either failed to improve or has not improved to the required standards but with justifiable reason, the HOS may, in exceptional circumstances, decide to extend the final written warning period – and s/he informs the employee of the performance standards that must be attained and the extended timescale for improvement and any support that may be made available to help the employee to achieve the required performance standards.
- 11.13 If the employee's work performance has failed to reach the required standards without justifiable reason the HOS may decide to dismiss the employee. Where dismissal is the outcome, this is with notice. A dismissal decision is made where performance has not improved within the duration of a final warning or has deteriorated very seriously after a written warning. (The HOS may also consider if other options are appropriate, providing these incur no costs to the authority e.g. early retirement) The HOS outlines in writing to the employee within 5 working days of the appropriate Stage III meeting the reasons for the dismissal decision and the employee's right of appeal – as outlined in section in Section 12 below.

NOTE - The level of sanction depends on the seriousness of the case and any known mitigating factors. However, there is no right to a series of written warnings – and in most cases there is normally one written warning and a final written warning before a dismissal decision is made.

12 Appeals procedure

- 12.1 An employee has the right of appeal against any sanction imposed following either a Capability Stage II and/or Stage III review meeting. A TU representative or workplace colleague may accompany an employee at an appeal hearing.
- 12.2 The decision letter from either the Capability Stage II or III review manager advises the name of the manager to whom the appeal should be made. The appeal must be made in writing within five working days of the date of the decision letter, and outline the grounds for the appeal.
- 12.3 The employee may appeal on the following grounds: -
- The procedure – a failure to follow procedure had an effect on the decision and/or
 - The decision – the evidence did not support the conclusion of the manager and/or
 - The penalty – too severe given the circumstances of the case and/or
 - New evidence – has come to light since the appropriate Capability Stage II or III review meeting, and was not reasonably available at the time of that hearing.

Arrangements for holding a Capability appeal meeting

- 12.4 Depending on the type of appeal, paragraphs 6.4, 6.6, 6.7 and 6.8 outline the appropriate person who has authority to conduct an appeal meeting. (hereafter called the appeal manager)
- 12.5 The appeal manager, with the assistance of HR, ensures that the respective Stage II and/or Stage III review manager provides a management case statement within five working days of the receipt of the employee's appeal. This statement is distributed to all parties a minimum of 2 working days prior to the Capability appeal meeting.
- 12.6 The appeal manager arranges the appeal meeting at a time and date which is mutually convenient to all parties as soon as is reasonably practicable, but within a maximum of 10 working days of receipt of the appeal.
- 12.7 The employee must provide details of any supporting evidence and/or the names of any witnesses supporting her/his appeal to the designated appeal manager at least two working days prior to the appeal meeting. The appeal manager makes arrangements for the release of any such witnesses.
- 12.8 At the appeal meeting the appeal manager and the employee, with her/his representative as appropriate, review the management case statement outlined above and any supporting evidence provided by the employee.

12.9 Based on the appeal meeting discussions, the appeal manager:-

- Considers all the evidence, including any new evidence submitted
- Determines whether the specific grounds of the appeal are valid
- Determines whether the sanction remains the same, is reduced or removed.

12.10 The decision of the appeal manager is final and is confirmed in writing within five working days of the appeal review meeting, including the reasons for the decision.

13 Grievances arising during the Capability procedure

13.1 If the employee wishes to raise a grievance during the capability process that is related to the case in any way, s/he should submit details of the grievance in writing to her/his line manager's manager – who will brief the manager conducting the capability process, as appropriate. The latter should take advice from either the HOS, the Director and/or HR as appropriate to **consider** suspending the capability process for a short period while the grievance is dealt with. Depending on the nature of the grievance, the manager, in liaison with the HOS, the Director and/or HR as appropriate, may also decide to bring in another manager to deal with the capability process.

13.2 If the grievance is a complaint of unlawful discrimination or that the real reason for the disciplinary action is not the reason put forward by management, then the grievance must be dealt with under the (separate) Grievance Procedure. The employee should submit the grievance in writing to her/his line manager's manager – who should then apply the process outlined in paragraph 13.1 above

NOTE Reference will be made to the current ACAS Code of Practice on Disciplinary and Grievance procedures.

14 Sickness absence during the Capability procedure

14.1 An employee who is unfit to attend a scheduled Capability Stage I, II or III meeting must provide a medical certificate stating that s/he is physically incapable of attending the meeting.

14.2 In such circumstances the Capability Stage I, II or III review meeting will be held as soon as is practicable.

15 Review of the procedure

15.1 The Council has delegated powers to the Chief Executive to determine and implement this procedure.. The procedure has been developed following detailed consultation with a wide range of stakeholders, and will be reviewed on a regular twelve monthly basis in accordance with 'best value' continuous improvement principles.

Ged Curran
Chief Executive

Examples of lack of capability

The following examples outline the different categories of poor performance that may lead to action being taken against an employee through the Capability procedure.

It is noted that action through the Capability procedure may relate either to one category of poor performance or to a combination of the different categories outlined below.

- Poor quality of work
- Low output
- Consistent/repeated failure to meet deadlines, agreed objectives or targets
- Consistent inability to recognise common problems and find appropriate solutions
- Consistent failure to accept changing work priorities
- Consistent unreasonable inflexibility in team working
- Despite appropriate coaching, training and support, a continuing inability to adapt to change e.g. changes in work practices and targets
- Despite appropriate coaching, training and support a demonstrable lack of skill, knowledge and/or ability to learn

NOTE - These examples are not exhaustive, as the Council offers a wide range of job roles and, consequently, job requirements.



Appendix 2

Improvement Action Plan – specimen example
THIS FORM IS STRICTLY PRIVATE AND CONFIDENTIAL

Name of employee: Job Title:.....

Section: Name of line manager.....

1 Has employee got an up to date copy of her/his:

- a) Job Description -YES/NO
- b) Person Specification - YES/NO
- c) Staff appraisal form – including a personal development plan? YES/NO

2 Summary outlining the nature and extent of the improvement required.



3 Summary outlining any new objectives and targets for the job holder.

4. Summary outlining any proposed new learning activities and/or personal support to assist the employee achieve the required performance standards.



5. Timescales for the new objectives/targets to be achieved.

6. Summary of ongoing one to one progress discussions during the proposed performance review period – together with any additional support activities.



Signature of line manager:

Date:

Signature of employee:

Date:

NOTE -

1. This Improvement Action Plan will be reviewed and updated jointly with the employee's staff appraisal form.
2. Please continue on an additional sheet if required.