

# Capability Procedure

Personnel and Training Services  
June 2006



**SALISBURY**  
District Council

## **1. Introduction**

- 1.1 If your manager believes that you are not capable of performing your duties to a satisfactory standard, it would be inappropriate to apply the Disciplinary Procedure and to issue disciplinary warnings unless gross incompetence is suspected. This Capability Procedure has been drawn up to help to identify the reasons for poor performance, and to help you to achieve the appropriate level of performance required for your post within a reasonable time scale.

## **2. Capability Procedure – its scope**

- 2.1 The procedure applies to all employees, except the Chief Executive and Policy Directors. Casual workers and employees in their probationary period are also excluded.
- 2.2 A separate Disciplinary Procedure is available for handling misconduct or gross incompetence. Further information on this is provided in the Disciplinary and Appeals Procedure.
- 2.3 Sometimes it may not be immediately clear whether some issues of poor performance fall into the scope of the Capability, Disciplinary or other procedure. Your manager will seek advice and guidance from Personnel & Training Services and decide which is the more appropriate, after weighing up all the circumstances.
- 2.4 Your manager will tell you which procedure is being followed and why. If, at any stage, your manager has good reason to believe that an alternative procedure is more appropriate, then the process will be halted and the issue addressed under another procedure.
- 2.5 At all stages of the procedure, if the employee under review is a Service Unit Head then the Service Unit Head's role will be undertaken by a Policy Director and the Policy Director's role will be undertaken by a different Policy Director or the Chief Executive.

## **3. Guiding Principles**

- 3.1 This procedure has been drawn up following consultation with the trade unions recognised by Salisbury District Council.
- 3.2 The procedure will be applied in a non-discriminatory way, irrespective of age, disability, gender, marital status, race religion and sexual orientation.
- 3.3 Some employees, such as those with learning difficulties, may need help in understanding this procedure and in exceptional circumstances can be accompanied by a trade union representative or a colleague at the informal stage. Other employees may need a translator, a signer, an interpreter, an induction loop system or help with reading or writing and they or their representative should make the necessary arrangements.
- 3.4 At all formal stages of the Capability Procedure, you have the right of representation. Details of this right are given in Appendix 1.
- 3.5 Capability issues will be treated as confidentially as possible, so that only those who need to know will be involved.
- 3.6 Issues where health and/or disability are a significant element of the capability concerns would normally be addressed using the Sickness Procedure or Disability Guide. If, however, circumstances dictate that this procedure is the most appropriate then the situation will be handled with particular sensitivity and according to legislative requirements current at the time.
- 3.7 You will have the right of appeal against redeployment or dismissal under this procedure.
- 3.8 No formal action will be taken in respect of a trade union representative until the Head of Personnel & Training Services or his or her representative has discussed the situation with the appropriate trade union official.

#### **4 Disability Issues**

**4.1** If your manager believes that your performance is affected by a disability then he/she will take advice from Personnel & Training Services before any action is taken. The Disability Guide should be read in conjunction with the Capability Procedure in order to inform actions taken within the context of this procedure or to consider what action is more appropriate to the circumstances of the case.

#### **5 Incapability through ill-health or injury**

**5.1** If the reasons for your incapability relate to ill-health or injury, your line manager will discuss his/her concerns with you and refer you to the Council's Occupational Health Adviser as soon as possible and according to the provisions of the Sickness Policy and Procedure.

**5.2** You will be fully consulted throughout. A friend or family member may attend medical consultations with you if you wish.

**5.3** See also the Sickness Policy and Procedure.

#### **6 Grievances**

**6.1** If you raise a grievance or accusation of bullying against your manager after he/she has raised concerns about your performance under this procedure it will be referred to Personnel and Training Services who will decide, according to the specifics of the case, whether:

- the capability process should be suspended until the grievance/bullying procedure has been completed or
- the issues are distinct, therefore, both procedures can run concurrently or
- the grievance/bullying procedure should be suspended until the capability process is complete.

#### **7 Performance Related Capability Issues – Informal Stage**

**7.1** Your manager will meet with you and explain the reasons for concern. An action plan will be drawn up and a review period given for your performance to improve.

**7.2** You will be given written confirmation of the meeting and the action plan.

**7.3** At the end of the review period your manager will decide whether or not to move to the next (formal) stage of this procedure. If the decision is so to do then this meeting will be classed as the first formal meeting of the procedure (see 8.1 below) and you will be accorded the right to be accompanied at this meeting. If, however, progress has been satisfactory and the formal stage of the procedure will not be invoked. S/he will simply meet with you again and inform you that your performance is now satisfactory.

**7.4** Your manager will continue to monitor your performance to ensure that it remains satisfactory.

#### **8 Performance Related Capability Issues – Formal Stage**

**8.1** Stage 1 - Your manager will meet with you. At this meeting your manager will

- Explain why they are still not satisfied with your performance
- Ask you to respond
- Consider your response.

If your manager does not accept that there are exceptional circumstances then s/he will

- issue you with a formal warning regarding your performance which will remain on file for twelve months.
- set objectives and targets for improvement. Ideally these should be agreed with you but if this is not possible then your manager may impose them.
- give a timescale for improvement and a review date. This will normally be one to three months depending on the circumstances. This may be amended in exceptional circumstances (eg sickness absence during the review period) in which case your manager will inform you in writing.
- inform you of the possible outcomes (see 9.1 below).
- If your manager does accept your explanation then no warning will be given but your manager will give you another timescale for improvement with a review date and continue to monitor your performance through regular meetings.

8.2 A Personnel & Training Services representative may also be in attendance at this meeting.

8.3 Your manager will meet with you, at time intervals to be agreed, during the review period to discuss progress against objectives and targets.

8.4 Stage 2 may be invoked at any time during the twelve month period following the issue of the formal warning if your performance is less than satisfactory during this period.

8.5 You will be given written confirmation of the outcome of the meeting.

## **9. Formal Stage - Stage 2**

9.1. At the end of the review period your manager will meet with you again. There are four possible outcomes at this meeting ie

- Satisfactory performance achieved and maintained, however performance will continue to be monitored informally
- Extension of review period. This may be amended in exceptional circumstances only (eg sickness absence during the review period) in which case your manager will inform you in writing.
- Satisfactory performance not achieved and/or maintained. If this is the case then this meeting will form Stage 2 of the procedure.
- If your performance has deteriorated at the end of the first review period you may be dismissed at this stage. You may not be dismissed by a manager at a lower level than one who reports to a Service Unit Head.

**9.2 Your manager will**

- Explain why they are still not satisfied with your performance
- Ask you to respond
- Consider your response.

**9.3** If your manager does not accept that there are exceptional circumstances then s/he will issue you with a final warning (or dismissal if performance has deteriorated) which will remain on file for two years.

9.4 You will be reminded of your objectives and targets for improvements and given a final timescale for improvement with a review date.

9.5 Your manager will also remind you of the possible outcomes which are

- Satisfactory performance achieved and maintained, however performance will continue to be monitored informally
- Extension of review period (only in exceptional circumstances see 9.1)
- Redeployment (see appendix 2 for further information on the redeployment process in capability cases). Redeployment is likely to be recommended only in

very few cases, where it is considered that although an employee is unlikely to be able to maintain satisfactory performance in their current post but that there may be other posts within the council for which their skills may be suitable. It should be noted that in the majority of cases this will result in a demotion.

- Dismissal.

9.6 You will be given written confirmation of the outcome of this meeting.

9.7 If your manager does accept your explanation then no warning will be given but your manager will give you another timescale for improvement and continue to monitor your performance through regular meetings.

9.8 If your performance is less than satisfactory during the two year period following the issue of the final warning then stage 3 may be invoked immediately.

## 10 Formal Stage – Stage 3 Dismissal

10.1 At the end of the final review period your manager will hold another meeting with you. The possible outcomes are listed in 9.5 above.

10.2 If your manager considers that your performance has not reached a satisfactory level then s/he will:

- Explain why they are still not satisfied with your performance
- Ask you to respond
- Consider your response.

10.3 If your manager does not accept your explanation then you will be dismissed with notice. You may not be dismissed by a manager at a lower level than one who reports to a Service Unit Head.

10.4 You will be given written confirmation of the outcome of this meeting and the process of appeal.

## 11 Appeal

11.1 You have the right to appeal against redeployment or dismissal.

11.2 Your appeal should be in writing and addressed to the manager who made the decision.

11.3 You must include full and specific details of the grounds for appeal. The appeal letter should also contain the name of your Trade Union representative or workplace colleague who will accompany you at the Appeal Hearing, if applicable.

11.4 The appeal should arrive within ten working days of the date of the letter giving the decision.

11.5 Arrangements for appeal hearings are given in Appendix 3.

11.6 There is no further internal right of appeal once the Presiding Officer has considered the issue.

## 12 Confidential Support

12.1 If you are the subject of the Capability Procedure you may feel you need support in addition to that offered by your trade union representative or workplace colleague. If this is the case then you may visit the Occupational Health Adviser who may refer you for confidential counselling.

**Right of Representation**

- 1.1 If you are required to attend a formal meeting or appeal hearing, you have the right to be accompanied by a single companion who is a trade union representative or official or a workplace colleague.
- 1.2 The chosen companion is permitted to address the meeting or appeal hearing (but not answer questions on your behalf) and is permitted to confer with you during the meeting or appeal hearing.
- 1.3 If you or your chosen companion is not available at the time proposed for the meeting or appeal hearing, then it may be postponed and a new date set by mutual agreement, subject to a maximum of **five** working days after the original date of the meeting or appeal hearing. If a date cannot be agreed within this time scale then the Council will unilaterally set a date. If you do not attend, the hearing will take place in your absence.
- 1.4 If you need a signer or translator during the course of a meeting or appeal hearing this person will attend in addition to the representative.
- 1.5 It is your responsibility to arrange representation.

## Redeployment Procedure

### 1. General Principles

- 1.1 The same process will be followed for redeployment to alternative work if this is proposed by a manager or has been recommended by medical or other specialist advice.
- 1.2 The opportunities for redeployment depend on whether there is a suitable vacancy. Salisbury District Council will not create a post to achieve redeployment.
- 1.3 A suitable vacancy is defined as a post which provides similar earnings (up to two grades lower than your current post), have acceptable duties, be within your capability and not involve unreasonable additional inconvenience to you.
- 1.4 It should be noted, however, that if redeployment is recommended for poor performance it may be necessary to redeploy you to a post which is more than two grades lower than your current post to ensure that the job is within your capability.
- 1.5 You may not be redeployed to a post at a higher grade than the one in which you are currently employed. You will be required to apply in the normal way for such posts.
- 1.6 You must immediately take up any suitable vacancy once it is offered.

### 2. Procedure

- 2.1 You will be provided with details of all vacancies within the Council until the date of your dismissal and be invited to express written interest in any suitable position. In order to ensure that this process is efficient and effective you will be required to complete a standard curriculum vitae form for submission with any expressions of interest.
- 2.2 Your current line manager and a Personnel & Training Services representative will work with you to assess possible redeployment opportunities. This will include assessing current and forthcoming vacancies including temporary positions within the council. All reasonable steps will be taken to redeploy you into a post of your choice but this will not always be possible and the council reserves the right to place you into a post which is considered suitable.
- 2.3 If a suitable vacancy is identified then you will be placed into this post for a trial period following an introductory meeting with the new line manager. Normally a suitable vacancy will be one where you meet the minimum requirements of the person specification or an 80% fit for the post or could undertake reasonable training to satisfy these criteria.
- 2.4 The trial period will be a minimum of four weeks. The length of the trial period will be agreed before you are placed into the post. This period may be extended by mutual agreement to allow further time to make an assessment of the success of the redeployment. The trial period will usually take place during your notice period.
- 2.5 During the trial period the appointing line manager will meet with you on a regular basis to review the placement. The Personnel and Training Services representative may also be in attendance if required.

- 2.6 During the trial period you will be employed on the terms and conditions applicable to the new post including salary, unless the redeployment is for medical reasons (see paragraph 6.1)
- 2.7 If, at the end of the trial period, the appointing manager and you are satisfied that the post and/or you are suitable then your appointment to that post will be confirmed in writing and a new contract or amendment to your current contract will be issued.
- 2.8 If more than one employee in a redeployment situation is suitable for a vacancy then an objective selection process will be arranged. This may include interview and/or assessment.
- 2.9 If, at the end of the trial period, or earlier, the appointing manager feels that you are not suitable he/she will meet with you to explain the reasons and confirm this in writing. If you are not satisfied with this decision you may register a grievance under the council's grievance procedure.
- 2.10 If this occurs you will then meet again with your previous line manager and PPT rep and together look for other redeployment opportunities unless your notice period has expired in which case your employment will be terminated. If your notice period has not expired and there is no other suitable vacancy then your employment will be terminated at the end of your previously notified notice period.
- 2.11 If, at the end of the trial period, or earlier, you feel, without good reason that the post is not suitable you will be deemed to have terminated your contract with immediate effect.
- 2.12 Any post offered and accepted will count as continuous service for any service related terms and conditions. All pension rights accrued under the Local Government Pension Scheme will also continue to apply.
- 2.13 If you have not been given the opportunity for a trial period in a post for which you believe you are suitable you may register a grievance under the council's grievance procedure.
- 2.14 You will remain the subject of the Capability Procedure once redeployment has occurred and the process may be re-activated at any time if the redeployment is not successful.

### **3 Responsibilities**

- 3.1 Your original line manager has overall responsibility for your redeployment including the full payment of your salary up to and including the successful completion or your trial period.
- 3.2 Your new line manager will assume day to day managerial responsibility for you commencing at the beginning of the trial period.
- 3.3 The potential new line manager is obliged to accept you for a trial period and to support and assist you during this period.
- 3.4 A nominated Personnel and Training Services representative is responsible for advising you and the managers during this process. You may also wish to seek advice from your trade union.
- 3.5 You are responsible for taking advantage of the support available during the redeployment process and for working positively with PPT and the line managers to achieve a successful outcome.



**3.6** If you are redeployed to a temporary post in another Service Unit and that post subsequently comes to an end any costs associated with this will be considered on a case-by-case basis by Management Team so that the employing Service Unit is not disadvantaged in terms of overspend of budget.

**3.7** Any protected salary, over and above the salary for the post into which you are redeployed will be funded by the releasing Service Unit.

#### **4 Timescales**

**4.1** As a general rule, six weeks is an appropriate period to seek redeployment. If your notice period is longer than six weeks this period will be used instead. Formal notice of dismissal will normally be given to you at the beginning of this period. This will be retracted if successful redeployment occurs.

#### **5 Training for Redeployment**

**5.1** Your manager, a Personnel & Training Services Representative and you will need to assess what skills are needed to help achieve alternative employment. These may include compiling CV and interview techniques. Your manager will consult you and the Training Manager to see what training and development opportunities can be provided.

#### **6 Salary and Pension Protection**

**6.1** The Council's policy on salary protection will apply in health cases only. It will not, however apply if you are offered and accept a permanent reduction in hours on the same grade. Your salary will be pro-rata.

**6.2** Where redeployment arises from poor performance salary protection will not apply.

**6.3** If you are a member of the Local Government pension scheme you should obtain information from the pensions section about protection of your pension.

## 13 Appeal Hearing

### 1 Attendees

The number of persons attending the appeal hearing should be kept to a minimum and will comprise:

- The Presiding Officer (normally the Service Unit of the relevant Unit). If the Service Unit Head is the line manager who made the original decision then another Service Unit Head or Policy Director will act as Presiding Officer.
- A Personnel and Training Services representative who will advise the Presiding Officer.
- The Line Manager who made the original decision.
- You
- Your trade union representative or workplace colleague.

### 2 Arrangements for the Appeal

- 2.1 The Appeal hearing should be held as soon as possible after receipt of the letter of appeal and in the case of dismissal, if possible, before the date of termination.
- 2.2 Arrangements for all appeals are made by Personnel & Training Services.
- 2.3 You will be informed of the date of the hearing at least five working days in advance.
- 2.4 If you or your manager wishes to introduce new information which has come to light since the decision in question was taken, then this must be exchanged at least two working days before the appeal hearing.
- 2.5 If you (rather than your representative) are unable for good reason to attend the hearing, it will be postponed and re arranged within five working days. If the reason is long term sickness absence and no date can be mutually agreed, however, the hearing can go ahead, once you or your representative have been advised and the representative has been given a reasonable opportunity to present the case.
- 2.6 Your access and communication needs and any other practical issues will be taken into account in the arrangements for and the conduct of the hearing.

### 3 Conduct of the Appeal Hearing

- 3.1 The Presiding Officer will manage the appeal hearing fairly and along the following lines:
  - you will state your reasons for appeal.
  - the Presiding Officer and your manager may question you
  - your manager states his/her reasons for reaching the decision
  - the Presiding Officer and you may question your manager
  - you may sum up, if you wish, without introducing new evidence
  - your manager may sum up, if they wish, without introducing new evidence
  - you, your representative and your manager withdraw while the Presiding Officer makes a decision, advised by the Personnel & Training representative.

- The Presiding Officer may recall either party to clarify any points. If this is necessary both sides will return even if only one is concerned with the point giving rise to concern.
- When the decision has been made the Presiding Officer will recall both parties and announce the decision.

#### **4 Possible Outcomes at Appeal**

The Presiding Officer may

- confirm the original decision made by the line manager
- overturn the original decision made by the line manager and clear the record
- overturn the original decision made by the line manager and impose a different sanction under the capability procedure

If you are reinstated on appeal after dismissal, your service will be continuous and any loss of pay between dismissal and reinstatement will be paid to you. The pay will be full pay in accordance with your contract of employment and any regular additional payments averaged over the 12 weeks immediately before your dismissal.

If the decision to dismiss is confirmed on appeal, the date of termination of employment will remain as originally stated in the letter of dismissal.

The Presiding Officer will confirm his/her decision on the appeal in writing to you.

There is no further internal right of appeal.