

<b>Wiltshire Council HR Policies And Procedures</b>
<b>Capability Procedure</b>

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<b>Related Policies:</b>	<ul style="list-style-type: none"> <li>- Absence Management policy</li> <li>- Disciplinary Policy</li> <li>- People Strategy</li> </ul>
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## **1 Policy Statement**

### **1.1** For the purpose of this document, incapability is defined as:

“where a member of staff is failing to carry out their responsibilities or duties in a satisfactory manner due to a lack of ability ie skill or aptitude.”

### **1.2** Such failings will be identified by the use of this procedure and steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of incapacity.

## **2 Scope**

### **2.1** This policy applies to all Wiltshire Council staff except those employed in schools and employees during their probationary period.

## **3 Introduction/Purpose**

### **3.1** This procedure is designed to ensure that a member of staff whose standard of performance is unacceptable is clearly informed what standards are expected and receives support towards achieving those standards.

### **3.2** If the cause of a member of staff's poor performance is related to ill-health then the Absence Management procedure should be followed.

## **4 Objectives**

### **4.1** The procedures set out in this document aim to ensure that there is:

- a means of monitoring performance and establishing performance criteria
- a degree of consistency in how staff with widely differing responsibilities and duties are given the opportunity to attain a satisfactory level of performance
- assistance in identifying the most appropriate forms of support and providing that support

### **4.2** if a member of staff does not meet the required standard of performance any consequent action will be based on:

- adequate evidence that the member of staff is incapable of performing their duties satisfactorily
- adequate evidence that the member of staff was given reasonable support and assistance to overcome the shortfalls and
- a fair procedure.

## **5 Procedure**

### **5.1** The first task is to identify that there is a problem. To assist in this the following questions should be addressed:

- what are the indications that an employee is not performing to the required standard?
- is the employee aware of the standards and expectations of the job?

- has the employee been given adequate induction and training?
  - have there been complaints about or criticisms of the employee's work from colleagues, suppliers, customers or members of the public?
  - are there factual grounds to indicate inadequate performance, such as poor results?
  - does the manager's own observations of the employee's work indicate dissatisfaction with their performance?
  - has the employee asked for help to overcome the problem?
- 5.2 The employee's capability must be assessed in relation to the job for which s/he is employed to do.
- 5.3 Once a manager has identified that there is a performance problem then the following procedure should be followed.
- 5.4 Each stage of the procedure should be carefully documented.

## 6 **Informal Stage**

- 6.1 The line manager will convene a meeting with the employee. At the meeting the line manager will outline the performance shortcomings, agree the performance standards required and the timeframe over which improvement will be expected and how this will be measured and monitored. This will be confirmed in writing. It is important that the employee is made aware of the consequences of the failure to improve.
- 6.2 The employee must also be given a copy of this procedure.
- 6.3 In discussion with the employee the line manager will also decide on the support and help that will be offered. The nature of the alleged shortcomings(s) will determine the nature of the help to be provided. This could include:
- mentoring and/or coaching
  - provision of suitable training
  - management and/or peer support
  - appropriate equipment..
- 6.4 The employee must be supported for a period of time which is reasonable considering the post, the nature of the shortcoming(s) and the employee's length of service before a decision is taken to move to the formal stage. This would normally be between 4 and 12 weeks.
- 6.5 Where the employee's performance improves to the standard required the employee should be informed of this and also reminded of the need to maintain the improved standard. The procedure may be suspended on the understanding that it will be re-invoked if performance becomes unsatisfactory at any time in the future.

## 7 **Formal Stage**

- 7.1 If, after monitoring and support provided within the informal stage, the employee's performance remains unsatisfactory the line manger will arrange a further meeting with the employee.

- 7.2 The employee can be accompanied by a trade union representative or workplace colleague.
- 7.3 The employee must be given at least 5 working days written notice of the meeting and confirmation of the nature of the concerns and any accompanying documents that will be referred to at the meeting.
- 7.4 At the meeting the employee will be given a reasonable opportunity to comment on the concerns and to ask any questions.
- 7.5 The line manager will then conclude what action s/he proposes to take. If there are no extenuating circumstances then the line manager will issue a written warning.
- 7.6 The written warning in the form of a letter must state:
- that it is a written warning
  - which aspects of the employee's performance must improve
  - what support will be available
  - what timescale and against what targets and criteria the employee's performance will be assessed
  - that failure to meet the required standards may lead to further action within the capability procedure which could include dismissal
  - the date of the end of the assessment period when a review meeting will be held.
- 7.7 At the review meeting the line manager will discuss with the employee their performance during the assessment period. Following discussion the line manager will decide:
- whether the employee's performance has reached the required standard, and therefore, after a monitoring period of 3-6 months, withdraw the procedure if performance continues to be satisfactory.
  - whether the employee's performance has not reached the required standard, and therefore issue a final written warning.
  - Whether the employee's performance has deteriorated, and therefore arrange a Capability Hearing.
- 7.8 The employee has a right to be accompanied at this meeting.
- 7.9 If a final written warning is issued, stages 7.1 – 7.7 should be repeated, but a final written warning should be issued at 7.5 if required.

## **8 Capability Hearing**

- 8.1 The employee will be given at least 5 working days written notice, advised of the right to be accompanied by a workplace colleague or trade union representative, confirmation of the nature of the concerns and provided with all relevant evidence that will be discussed at the Hearing.
- 8.2 The line manager will present the evidence for the areas of concern, the process followed and the support and training given.
- 8.3 The employee will be given the opportunity to respond.

- 8.4 The Service Director will consider the evidence about the complaint of lack of capability and consider whether it is justified and determine whether:
- to dismiss the employee with notice
  - to give the employee further time to improve
  - to consider whether alternative employment is available and can be offered to the employee (see paragraph 8.5 below)
  - to withdraw the procedure
- 8.5 If redeployment is possible it is unlikely to be equivalent employment, particularly in the case of an unsatisfactory promoted employee, who could be offered a post at his/her previous level. An offer of reasonable redeployment to the employee will be made in writing and the employee will be given reasonable time to consider the offer, and if he/she so wishes, discuss it with his/her employee representative. Following acceptance of redeployment, salary will be paid at the appropriate rate for the post regardless of any previous salary paid in any previous post. Redeployment will only be made to an established current vacancy. The authority is not obliged to create a post for the employee.
- 8.6 The decision must be confirmed in writing within 5 days of the hearing. If the decision is dismissal then the employee must be notified of his/her right to appeal.

## **9 Appeal**

- 9.1 If following the taking of any form of disciplinary / capability action an employee wishes to exercise his right of appeal he/she must do so by lodging a notice of the grounds of appeal in writing with their Service Manager and copied to the HR Advisor who has been involved with the case within ten working days of being notified of the action.

The written notice of appeal must make clear whether the employee is appealing against the finding of misconduct / capability and/or the form of action decided upon.

- 9.2 All appeals will be heard by an Appeals Panel within 25 days of the receipt of the appeal being received.

The employee and his/her representative will be given notice in writing at least five working days in advance of the time and place of the hearing.

Any extension on the time frames must be agreed in advance by both parties.

- 9.3 The Appeals Panel consists of a nominated representative who has not had prior involvement with the case, advised by a representative from Human Resources. At the appeal hearing both parties (i.e. the individual who is appealing against the action taken against them and the officer who is presenting the management's case) have the opportunity to state their case and to ask questions of each other. The employee may be accompanied to the appeal hearing by a work colleague, or a union representative. Once they have heard the case the panel may make the following range of decisions.

The nominated representative hearing an appeal against the action taken / decision to dismiss the employee may allow the appeal, or dismiss the appeal.

The Appeals Panel has power in the case of an appeal against action that includes dismissal to:

- dismiss the appeal; or
- to allow the appeal; or
- to allow the appeal and substitute a different warning (greater or lesser); or
- to dismiss the employee.

There is no further right of internal appeal against the decision of the Appeals Panel.

## **10. Representation**

As confirmed throughout the Procedure, employees may be represented at formal hearings and appeals by a trade union representative or a workplace colleague.

## **11. Interpretation, variation and termination**

11.1 Any questions as to the interpretation of this policy shall be referred to Human Resources.

11.2 Management and unions will jointly review the collective performance and effectiveness of the policy and procedure at appropriate intervals. There shall be no variation to this policy except by agreement through the Joint Consultative Committee.

## **12 Contact Details**

12.1 HR Advisory Team

## **13 Appendices/Supporting Information**

13.1 To be developed

## **14 Policy Version History**

Author: Karen Gard

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