



**CHESHIRE WEST AND CHESTER COUNCIL**  
**HUMAN RESOURCES**  
**CAPABILITY PROCEDURE**

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**Appendix 1 Capability Procedure Flowchart**

Where managers perceive there to be a potential capability issue, the following procedure should be applied:

## **1. Informal - Management Support and Guidance**

- 1.1 Before embarking on the formal procedure and moving the employee into Stage One, managers must ensure that there has been an attempt to deal with the issue informally.
- 1.2 Management support and guidance are intended to improve an employee's performance and are a normal feature of a manager's role, as are regular review meetings. Employees should be supported and encouraged to meet the relevant standard of performance.
- 1.3 Persistent cases of poor performance will be investigated by the manager as soon as an apparent lack of capability is suspected. It should also include consideration of matters outside the employee's control such as:
  - (i) Whether the required standards are reasonable, in all the circumstances, and have been adequately explained; and
  - (ii) Whether appropriate and sufficient training, particularly in the case of newly appointed, promoted or redeployed employees, has been given.

Managers should hold an informal discussion with the employee focusing on how the performance of the employee is thought to be unsatisfactory, and agreeing constructive moves and suggestions to aid improvement. An action plan may include details on training or retraining, closer supervision, referral to Occupational Health, suitable adjustments supported by the Access to Work Programme, better instruction on how to do the work etc.

- 1.4 This may be a more satisfactory method of resolving problems than a formal investigation. It is an attempt to correct a situation and prevent it from becoming worse, therefore it should take the form of a discussion to encourage the employee to improve their performance. It is a manager's responsibility to:
  - Create the right environment for good performance in the workplace,
  - Encourage the person concerned to discuss their performance
  - Establish whether the employee is experiencing any problems which might be the cause of poor performance
  - Ensure appropriateness of job content
  - Ensure volume of workload is reasonable
  - Ensure adequate advice and supervision is available

Where underlying cause(s) of poor performance are identified such as:

- inadequate training or instruction,
- faulty systems,
- difficult working conditions,
- lack of support facilities,
- health and fitness,
- Disability under the Equality Act (HR must be consulted),

The manager must take the appropriate measures to address the situation, including seeking advice from HR. A record of the actions should be noted.

1.5 The employee is responsible for:

- ensuring that they recognise the standard of work expected of them and are aware of their responsibilities, including working to at least the level required for their role within the Council's Competency Framework,
- performing their duties to a satisfactory level,
- engaging in any reasonable training and development that will enable them to reach the required level of performance for the job,
- understanding that if their work performance falls below that which is deemed to be acceptable, managers will be obliged to address this,
- responding to corrective measures that are identified,
- informing their manager of any issues which could be affecting their work performance. This could include personal issues outside the workplace, health or disability issues.

1.6 During both informal and formal stages of this procedure, normal management arrangements such as one to ones and appraisals/performance reviews should continue. Where appropriate Oracle Performance Management system should be utilised.

1.7 It is essential that the employee is made fully aware that they are being managed under the informal stage of this Procedure. Therefore, the manager must confirm this in writing to the employee

1.8 Individuals should typically be managed informally for no more than 3 months before being moved into the formal procedure. Timescales may differ in particular circumstances and advice should be sought from HR.

## **2.0 Formal - Investigation of continuous poor performance**

(i) Once an individual has been moved into the Formal procedure, a reasonable timescale should be adhered to in order to resolve the situation and in any event wherever possible should be resolved within 6 months.

(ii) Where capability is due to ill health, it may be appropriate to consider redeployment and other support options at an earlier stage.

(iii) The stages of the procedure will normally be implemented sequentially, however, where performance is sufficiently serious, managers may take action under the latter stages of the process following consultation with HR.

### **2.1 Stage One**

2.1.1 Persistent cases of poor performance will be investigated by the manager as soon as an apparent lack of capability is suspected. It should also include consideration of matters outside the employee's control such as:

(i) Whether the required standards are reasonable, in all the circumstances, and have been adequately explained; and

(ii) Whether appropriate and sufficient training and supported has been offered, particularly in the case of newly appointed or promoted employees, has been given

2.1.2 The manager shall identify as precisely as possible the extent to which the employee's performance is deficient. The assessment must be specific enough for the employee to know exactly what it is about their performance that is unsatisfactory and how they can reach the required standard, and the manager must confirm this in writing.

2.1.3 Managers must keep an accurate record of the discussion and follow this up in writing to the employee. The letter should include the performance outcomes required, together with an agreed action plan (signed by both parties), the date when the review period is to end, and notification of the consequences of their continued poor performance.

Notes should be taken at each key stage meeting and a copy given to the employee. At other ad hoc or review meetings, only action points and key issues need to be noted and a summary given to the employee.

2.1.4 Review Periods - Three months is the minimum review period, however it may be necessary to impose a longer review period to be fair and/or to ensure a return to satisfactory standards of performance

The following are some examples of when a longer review period may be justified:

(i) Where an employee has returned from a lengthy period of sick leave

(ii) Where sickness has been the result of a serious illness which has caused a fall in performance;

(iii) Where a person is doing work that requires a longer period than three months to assess performance properly, for example a research or specialist job where results will not be apparent for some time;

(iv) Where the person has been moved or redeployed to different work and needs time to settle into the new job before being fully tested;

(v) Where a change in the relevant Director/Head of Service or other Officer means a longer period is needed for the new Manager to assess the situation fairly and accurately.

(vi) Where an employee works flexibly, for example compressed hours, term time only or part year working.

If there is very little or no visible improvement during the review period or exceptional circumstances indicate that a progression to the next stage is advisable, then it is possible to end the review period before the three months has expired and move to the next stage of the procedure.

2.1.5 Every effort should be made to provide any help, advice and guidance that will allow the individual the opportunity to improve. The manager should monitor the individual's performance regularly.

2.1.6 Where possible, if an suitable alternative job with the Council is available the Redeployment Procedure will be applied and employee should be provided with a copy of the Redeployment Procedure. Any assessment of alternative work should consider the risk of recurrence of the original problems. Where redeployment is attempted, a trial period of a minimum of 4 weeks must be allowed for the suitability of the alternative job to be assessed. If the Redeployment Procedure is an option to be considered then it should be raised and discussed with a member of HR in the first instance.

2.1.7 The manager should arrange a further meeting for the agreed target date to review performance. If the performance has improved sufficiently, the procedure should come to an end. The employee will be informed in writing at the end of a satisfactory review period that, should capability again become an issue within 6 months for the same reason unless there are exceptional circumstances, they will move immediately into the next stage of the Capability Procedure, with the possibility of dismissal as an outcome.

2.1.8 Where there has been little or no improvement, the manager must establish the reason for this, then it will be necessary to move to the next stage of the Capability Procedure.

## **2.2 Stage Two**

2.2.1 Managers must follow the guidelines set out in the Informal Stage and in Stage One.

2.2.2 The manager must inform the employee that if, at the end of this review period, a satisfactory standard of performance is not achieved then it will be necessary to move to Stage Three of the procedure, which could result in dismissal.

2.2.3 At the end of the Stage Two period, performance outcomes will be assessed and discussed. Where improvements have been made, this procedure will have come to a satisfactory conclusion and the manager should notify the employee verbally and in writing. Should the manager need to continue to monitor performance for a further limited period (in agreement with HR) to ensure that any improvement is being sustained, this must be discussed. The person should be notified when this further period will and has come to an end.

If the individual has improved in some areas but not in others then the manager should consider whether they wish to remove the areas which are now satisfactory from the action plan and set a new review period; or whether they wish to extend the review period and continue to monitor all areas. The person should be notified in writing of the areas which still require improvement and when a further review period will come to an end.

2.2.4 Alternatively, where there has been little or no improvement, the individual must be informed that it will be necessary to move to the third stage of the procedure. It may be necessary to end the review period before the three months has expired and move to Stage Three if there is no evidence of any real improvement or effort being made or exceptional circumstances indicate that a progression to the next stage is advisable.

## **2.3 Stage Three**

2.3.1 Where, despite reasonable encouragement, support and assistance, the employee is unable to reach the required standard of performance, the manager will refer the matter to their Head of Service. The Head of Service will then write to the employee inviting them to a meeting, giving them a minimum of 5 working days notice of the time and place of the hearing, and the employee will be allowed to be represented by either their accredited trade union representative or work colleague.

The Head of Service must ensure that the correct steps have been taken to enable the employee to improve their performance and decide whether it would be helpful to have another review period. HR should be consulted prior to setting and communicating a further review period.

2.3.2 The Head of Service may consider other options, such as redeployment to another job. However, it cannot be guaranteed that this will be in the same service or section, or on the same grade, although the Head of Service will make every effort to find a mutually agreeable alternative. Any redeployment must be in accordance with the Council's Redeployment Procedure.

2.3.3 Where suitable alternative employment is not available, job rotation or a change of duties may be considered including re-evaluation of the job which may therefore result in a reduction in salary. However, re-evaluation of the role will only be considered subject to business needs and the needs of the service. If this is not possible, the only other course of action will be to terminate the contract of employment.

2.3.4 Dismissal is always a last resort, when all possible alternatives have been exhausted.

2.3.5 A decision to dismiss any employee will normally be taken by the appropriate Head of Service. Human Resources must be consulted before this decision is taken.

2.3.6 Notice of the dismissal must be in writing and contain the reason for dismissal, the salient points raised throughout the procedure, including performance outcomes set and the review period. It must also state the employee's right of appeal.

### **3. Single Error With Serious Consequences**

3.1 Where an employee makes a single error and the actual consequences of that error are so serious they constitute gross negligence, then the disciplinary policy may be more appropriate to use and the individual may be summarily dismissed.

### **4. Sickness absence during the procedure**

4.1 If an employee has a short term sickness absence whilst subject to the capability procedure, then there will be no requirement to alter the review period.

4.2 If the sickness is lengthy, then the capability procedure should be suspended whilst the employee's sickness is dealt with under the Absence Management procedure. This may include referral to the

Occupational Health Unit. The procedure will resume on their return to work and review periods extended. If the individual's sickness occurs near the end of the review period, or the manager feels that they have enough evidence to make an assessment of performance they can make a decision to either end the capability procedure if improvements have been made or move to the next stage of the procedure on the individual's return to work.

- 4.3 If the manager feels that the individual is abusing the sick pay scheme by using sickness absence to avoid finishing a review period or avoid attending review meetings, then the manager can withhold sick pay as detailed under the Managing Attendance procedure and if the situation continues disciplinary action may be proposed. HR advice should be sought in these circumstances.
- 4.4 If the sickness is related to a disability, then a full review should be undertaken to consider whether their areas of underperformance are affected by their disability and whether any adjustments are needed to help them improve. In these circumstances it may be necessary to involve the Occupational Health Team or Access to Work Programme and further advice should be sought from HR. Access to Work assists people with disabilities providing practical support to overcome work related obstacles

## **5. Suspending the Capability Process**

- 5.1 If an employee has a short term change in duties whilst subject to the capability procedure, for example if assigned or seconded to a project, then there will be no requirement to alter the review period.
- 5.2 If the change in duties is longer term then the capability procedure should be temporarily suspended until such time as the employee returns to the substantive job role. The procedure will resume on their return to work and review periods extended if necessary.

## **6.0 Case Conferences and Co-ordination**

- 6.1 As progression through the procedure occurs it may be necessary to hold regular case conferences especially if other procedures are being used such as managing attendance, grievance, data protection requests etc... This will ensure that all involved are aware of their roles, responsibilities, timescales and what information is required and shared; and ensures a joined up approach to resolving issues.
- 6.2 At any stage, if an alternative job with the Council is a reasonable and viable option, the Redeployment Procedure must be applied. Any



assessment of alternative work should consider the risk of recurrence of the original problems. Where redeployment is attempted, a trial period of a minimum of 4 weeks must be allowed for the suitability of the alternative job to be assessed. If the Redeployment Procedure is a potential option then it should be raised and discussed with a member of HR in the first instance.

## **7. Representation**

- 7.1 During the formal procedure, the employee has the right to be accompanied by an accredited trade union representative or work colleague.

## **8. Right Of Appeal**

- 8.1 All employees have the right to appeal at the end of the procedure if they are dissatisfied with the application of the procedure or the manager's decision.
- 8.2 The employee must give written notice of intention to appeal to their Head of Service. This must be within ten working days of receipt of the letter from their Manager.
- 8.3 Appeals against any action short of dismissal will be heard by the relevant Director.
- 8.4 Appeals against dismissal will be heard by a Director or Head of Service not involved in the original decision at the earliest possible opportunity. The outcome of the Appeal will be provided to the parties personally wherever possible. However, this decision may not be immediately at the end of the appeal hearing as they may need time to consider. The decision will then be confirmed to the employee within 5 working days of a decision being reached
- 8.5 Arrangements for the procedure of the appeal are the same as those outlined in the Council's Disciplinary Procedure.

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4.0	November 2010 Amended Jan 11 (Equality Act), Revised December 2011	December 2011
5.0	Amended May 13	June 2013



## CAPABILITY PROCEDURE FLOW CHART (Refer to Procedure for Timescales)

