



Performance Management (Capability) Policy

Revised April 2017



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1. Policy Statement

- 1.1 This policy is designed to help and encourage all employees to achieve and maintain standards of good performance. The formal process should be followed once all other informal avenues have been exhausted. It is the employee's manager's responsibility to follow the procedure where performance is shown to be below the standards required for the role.
- 1.2 The City of Wolverhampton Council has a commitment to assist employees to achieve and maintain a high standard of performance in their work. It will ensure that standards are clearly defined and communicated, performance is monitored and employees are given appropriate training and support to meet these standards.
- 1.3 Cases of poor performance should be identified and tackled promptly and the manager's focus and the employee's efforts must be to work together to meet the required standards.
- 1.4 The annual performance appraisal process is where objectives and development needs are discussed and agreed. Cases of poor performance should not be left to be dealt with under this process. The appraisal sets the standards for monitoring and reviewing the objective achievements.
- 1.5 Issues of poor performance should be identified at an employee's 1:1 meeting and tackled promptly.
- 1.6 Employees have a statutory right to be accompanied by a trade union representative, or work colleague, at any formal meeting or appeal hearing.
- 1.7 The Council will review this policy and procedure from time to time in line with statutory procedure and best practice.

2. Definition

- 2.1 Capability relates to the inability of an employee to meet the required standards of the role due to insufficient skill level or aptitudes.

3. Scope

- 3.1 This policy and procedure applies to all employees of the Council, excluding those employees directly employed by schools, JNC officers and employees who are within their probationary period, in which case, the probationary procedure applies.
- 3.2 From the point of approval, this policy will apply to any employee currently subject to performance management (capability) procedures.

4. Principles

4.1 The City of Wolverhampton Council recognises that its employees are essential to achieving its strategic objectives.

4.2 The policy aim is to help employees to perform competently in his/her job role.

4.3 In applying this policy, the Council will:

- Ensure that the agile workstyle is well suited to the role and the needs of the individual.
- Ensure that employees are competent and confident in their roles by encouraging a continuous cycle of personal development including:
 - Induction
 - 1:1 meetings
 - Group supervisory meetings – where appropriate
 - Performance appraisal
- Identify and tackle cases of poor performance promptly
- Establish the facts before taking action
- Not normally dismiss an employee for poor performance unless a chance to improve has been given
- Ensure that objectives and performance measurements are discussed at the annual appraisal meeting
- Ensure that matters of poor performance are addressed throughout the year through 1:1s or group supervisory meetings and that the annual appraisal process contains no surprises for employees or managers over performance levels
- Consider whether poor performance may be related to a disability and if so, whether there are any reasonable adjustments that can be made to overcome difficulties caused by workplace arrangements
- Assess each case on its merits.

4.4 Address issues relating to attendance and health through the Management of Attendance Policy/Procedure.

4.5 Address issues relating to misconduct through the disciplinary procedure.

4.6 Any refusal to comply with reasonable instructions relating to performance standards will be tackled under the disciplinary procedure.

- 4.7 Before taking any formal action, managers should first seek to establish the facts and decide whether a more positive approach is likely to be more effective.

5. Process and Procedure

- 5.1 The policy is written with the purpose of helping employees to improve their work performance. Managers will assess each capability issue on its merits providing support, guidance and the offer of any available training, where applicable, to enable the employee to reach the expected level to perform in his/her job role competently.
- 5.2 Human Resources will be involved in **all** formal review stages of the capability process to offer coaching, support and guidance to managers, enabling them to resolve performance issues at the earliest intervention.
- 5.3 Employees will have the right to be accompanied by a work colleague or trade union representative at any formal capability meetings or at an appeal hearing. Managers should keep records of all 1-1's and formal review meetings.

6. Informal Action

- 6.1 Cases of minor or unsatisfactory performance are usually best dealt with informally. A quiet word may be all that is necessary to improve an employee's performance. In some cases, additional support, coaching and advice may be necessary.
- 6.2 The cause of the poor performance should be discussed with the employee and the appropriate action to rectify the issues taken.
- 6.3 Where managers monitoring an employee's performance identify the cause for the underperformance is due to an ill-suited agile workstyle, the employee can be withdrawn from agile working arrangements as part of a performance action plan to support necessary improvements. The same applies if an agile worker's workspace appears to be disruptive or distracting.
- 6.4 Where managers monitoring an employee's performance identify the cause for the underperformance is due to the lack of skills required to do the job, the employee should be offered training, coaching or some other appropriate assistance, if applicable.
- 6.5 A reasonable timescale to achieve and maintain the required standard should also be agreed between the manager and employee. Managers should keep brief notes of any informal discussions held with the employee.
- 6.6 Options available at this stage may include:
- Training / Retraining

- Referral, where appropriate, to employees support services, such as Occupational Health and/or counselling support
- Mentoring / Coaching
- Closer supervision for a limited period
- Temporary alterations in duties which do not change the character of the job but allow the individual to develop at a slower pace

6.7 The objective of the informal stage is to alleviate or remove the problem after adequate time has been allowed for improvement. If, however, it becomes clear that acceptable performance in the post cannot be achieved within reasonable timescales, the matter should be progressed to the formal procedure.

7. Formal Action

Unable to attend meeting

Employees who are unable to attend the formal review meetings because their trade union representative or work colleague cannot attend may be offered a reasonable alternative date within five working days of the original date.

In instances where the employee becomes sick or has a stress related illness the review meeting can be re-scheduled once. If the employee remains sick, the hearing should go ahead and a decision made in his/her absence.

7.1 Formal Capability Meeting

Where an employee shows little (or insufficient) improvement following informal attempts to deal with the performance issues, the manager will write to the employee inviting him/her to attend a formal capability meeting.

Managers are responsible for setting realistic standards of performance, for explaining these standards to employees and for the provision of training, support and guidance, where applicable, so that the employee has the opportunity to perform well.

The employee should be given five working days' notice of the meeting. The letter should advise them of:

- The specific nature of the poor performance issue along with supporting documents, where appropriate
- Time and date of the formal review meeting
- The right to be accompanied by their trade union representative or work colleague.

At the formal capability meeting the manager will present evidence of the informal actions/support that has been given to assist the employee to reach and maintain the required standard of performance.

The employee will be encouraged to give his/her view of the performance issues raised and asked whether any further support is needed to improve.

The employee will be notified within five working days of the outcome of this meeting, unless it is not practicable to do so.

The outcome of the formal capability meeting may be one of the following:

- No further action is required and the employee will receive written notification confirming this decision.
- The finding of poor performance, for which a formal improvement letter is issued to the employee

The letter will cover the following:

- The performance issue
- The improvement required
- The timescales for achieving the improvement
- Review date
- Any support the manager will give to assist the employee
- Potential to progress to a final capability review hearing, which could potentially result in dismissal, if insufficient improvement or further evidence of poor performance is demonstrated during the improvement period.

The length of the improvement period will be dependent upon the performance issues identified. A reasonable length of time should be agreed for improvement to be made. The precise time for the improvement will depend upon the complexity of the issue and the potential adverse impact on the service delivery.

Managers should provide support, guidance and training as appropriate, throughout the review period to help enable employees to improve to the required level of competence.

A review meeting should be held at the end of the agreed improvement period. The outcome of this meeting may be one of the following:

- No further action is required and the employee will receive written notification confirming this decision.
- There has been some improvement but not to the expected level required, therefore the review period will be extended for a specific period.

- The manager will continue to monitor the employee's performance and will offer training, development, advice, guidance or other support to enable the employee to achieve to the required standard during this review period.
- The finding of insufficient improvement, or further evidence of poor performance, or where any improvement has not been maintained. The employee will be advised that they will now progress to a final capability review hearing in accordance with the formal procedure below.
 - The employee must be made aware that this is the final stage of the Capability procedure and their employment is at risk.

7.2 Final Capability Hearing (Dismissal or Other Action)

Where, after the agreed or extended period of time, improvement to the standard required has not taken place, the employee will be invited to a final capability hearing with a Service Director or their nominee.

Prior to this hearing taking place, the manager will gather all of the evidence and assemble all of the facts of the case in to a Case Summary Report.

The employee should be given ten working days' notice of the meeting, and the invite letter should include the following:

- Time and date of the hearing
- Right to be accompanied at the meeting by a trade union representative or a work colleague
- Their right to ask relevant witnesses to appear to support his/her case
- Issues of concern regarding performance during the review period along with supporting documents, if appropriate. Supporting documents may include notes of one to ones or supervisory meetings, the appraisal documentation showing agreed objectives and/or notes from appraisal meetings.

The following formal actions will be considered and the employee will be notified of the outcome of the hearing in writing:

- **Dismissal on Capability Grounds**
 - The employee will receive a formal failure to improve letter that explains that they are being dismissed on capability grounds and given the appropriate notice period as set out in their contract of employment.

OR

- **Alternative to dismissal** – this will only be considered with the employee's consent, where there are mitigating circumstances and clearly identified and agreed new actions which should lead to improvement within an agreed review period.
 - **Transfer** - A transfer to a single, specified and available post of the same grade which the employee would be competent to fill as an alternative to dismissal.
 - **Demotion** - Demotion to a lower graded, specified and available post. In this instance, there will be no protection of pay and the employee will automatically serve a 6 month probationary period in the new post. The recording of this sanction will remain on file for 24 months.
 - Should the Chair of the capability hearing be contemplating a transfer or demotion, then the hearing must be adjourned and the case discussed with the Head of Human Resources before any alternative job offer is made. If this sanction is approved and the employee agrees to this offer; the right of appeal will be removed. If the employee does not agree to an offer on these terms, as an alternative to dismissal, then dismissal will take place and he/she will be informed of his/her right of appeal.
 - **Extension of the improvement period** for a specific period. A clear timetable for support and supervision will be established, detailing any targets to be met.
 - The manager will continue to monitor the employee's performance and will offer training, development, advice, guidance or other support to enable the employee to achieve to the required standard during this review period.
 - If, at the end of an agreed extended improvement period, there is evidence of insufficient improvement, or further evidence of poor performance, or any improvement has not been maintained, the final capability review hearing will be reconvened and the employee will be advised that their employment remains at risk.

The decision should be communicated in writing to the employee within five working days of the date of the meeting.

8. Appeals against Dismissal (Appeal Hearing)

- 8.1 The right of appeal against dismissal will be to the Human Resources Appeal Panel. The notice of intention to appeal against dismissal should be made in writing to the relevant Strategic Director within **five working days** of written confirmation of dismissal.
- 8.2 The purpose of an appeal against dismissal is for an employee to have his/her case reviewed and for the Chair to decide whether or not the dismissal applied is fair, reasonable, consistent and soundly based.

9. Roles and Responsibilities

9.1 Roles and Responsibilities of Employees

Employees have a responsibility to comply with this policy adhering to its terms and conditions, and be responsible for their performance.

9.2 Roles and Responsibilities of Managers

Managers should ensure that this policy is applied within their own area. Any queries on the application or interpretation of this policy must be discussed with HR prior to any action being taken for poor performance.

9.3 Roles and Responsibilities of HR

HR will provide operational support and advice to the organisation to enable the effective management of capability issues under this policy.

Specifically, HR has a responsibility to:

- Ensure the communication, maintenance, regular review and up dating of this policy
- Monitor and review delivery and impact of this policy.
- Ensuring managers are sufficiently trained to implement this policy.

9.4 Role of Head of Human Resources

In consultation with the recognised Trade Unions, The Head of Human Resources will exercise delegated authority for and be responsible for the on-going review and updating of this Policy to ensure compliance with changes in statutory requirements and operational delivery, including responsibility for identifying the appropriate process for the regular evaluation of the effectiveness of this policy. Any fundamental changes to this policy will be brought before the Resources Panel for approval.

9.5 Role of Trade Unions

Any review and revisions of this policy will be undertaken by HR and will be in consultation with the Council's recognised trade unions.

10. Monitoring and Review

The Capability policy and procedure will be reviewed and updated annually and be available to managers and employees via the HR intranet.

11. Links to other Policies and Procedures

Performance Appraisal and Personal Development Review Policy and Procedure

Grievance Policy
Disciplinary Policy

12. Equality

12.1 An Equality Analysis has been carried out on this policy and procedure.

12.2 The Council has a duty to monitor the application of the policy in relation to protected characteristics under the Equality Act 2010. This is reported annually in the Council's Equality Monitoring Report.

12.3 If any aspect of the capability procedure causes you difficulty on account of any disability that you may have, or if you need assistance because English is not your first language, you should raise this issue with HR, who will make appropriate arrangements.