

Capability (Performance) Procedure

Non-Teachers

Capability (Performance) Procedure – January 2013

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1. Policy Statement

The purpose of this policy is to ensure Council staff work to high and consistent standards in accordance with their job description, person specification, core qualities, leadership qualities (if appropriate) and the 'Solihull Way'. The Council is responsible for ensuring that employees are provided with the opportunity, support and encouragement to recover their performance when it fails to meet the required standards.

This Policy and Procedure applies to all employees except for employees who are employed on JNC and teachers' terms and conditions where separate procedures are in place.

The procedure aims to ensure that the reasons for any performance or capability issues are explored fully and plans are put in place to overcome issues. The ultimate aim of the process is to see an improvement in the individual's effectiveness by adopting a supportive approach.

2. Definition

A performance or capability issue is defined as any decline in normal levels of performance, or the inability to reach satisfactory levels of competence, which may be due to lack of knowledge, skill, ability or the use of inappropriate behaviours.

This procedure should be used where there is an underlying lack of capability, rather than a deliberate failure on the part of the employee to perform to required standards, in which case the disciplinary procedure would be appropriate.

It is important that cultural, disability and other diversity related issues are taken into account when dealing with any performance issue.

NOTE: Unless specified otherwise in this procedure the term "manager" is used generally to include line manager, Head Teacher, supervisor, team leader, manager, senior manager or senior member of staff.

3. Purpose

The Capability Procedure provides a 3 stage process for identifying, understanding managing and resolving shortfalls in an individual's performance where this falls below the standard normally expected.

The overall aim of the procedure is to:

- Ensure that any concerns about an employee's ability to achieve acceptable standards of work are addressed effectively through a clear and supportive procedure.
- Ensure that supervision, training, counselling and support measures are deployed appropriately to help employees to achieve acceptable standards of work.

- Provide a clear procedure for the termination of employment in cases where an employee does not reach a satisfactory and acceptable level of performance.
- Bring performance to a level at which an employee becomes effective. Acceptable levels of performance are normally identified through the requirements and objectives agreed for the role as part of the performance review discussions between the employee and manager and as defined for the role within job description and person specification.

4. Equality Considerations

Managers/ Head Teachers should take particular care to ensure employees with a disability are not unfairly discriminated. Required formats or reasonable adjustments will depend on an individual's needs, personal preferences and access to technology and may, for example, include large print, audio tape, email, Braille, memory stick or CD. Consideration must also be given to the provision of language and interpreting services where English is not the first language of an employee. Any reasonable adjustments must be made to enable a disabled employee to undertake the role and responsibilities of their post.

5. Principles

- 5.1 Managers/Head Teachers should ensure that any individual whose performance is unsatisfactory is clear about the:
 - level of concern;
 - evidence used to reach this conclusion;
 - expected level of performance required;
 - type of support available;
 - consequences of failing to improve their performance.
- 5.2 A manager/Head Teacher contemplating using this procedure beyond the informal stage must seek advice from their HR Advisor.
- 5.3 Performance issues should not be viewed in isolation and should be considered in the overall context of performance management.
- 5.4 At each stage of the procedure, an employee will be informed about the shortfall in performance and will be given an opportunity to provide an explanation before any action is taken.
- 5.5 At all formal stages of the procedure, employees have the right to be accompanied by a Trade Union Representative, or work colleague. Some employees may require peer support where there is a specific need, i.e. from other disabled representatives. Managers must take account of this in their approach to applying the procedure at all stages.
- 5.6 If the work colleague/representative is unable to attend a meeting on the date proposed, the meeting will be rearranged once and an alternative date mutually agreed. The alternative date should normally be within five working days of the original date.

- 5.7 At all times an individual's right to confidentiality will be respected.
- 5.8 In the event of any action being proposed under this Procedure against a Trade Union Representative, HR must be informed and the appropriate Regional Officer of that Trade Union should be notified prior to the procedure being implemented.

6. Responsibilities

- 6.1 It is the manager/Head Teacher's responsibility to:
- monitor and address performance issues as early as possible;
 - set objectives and expectations that are realistic, achievable and in accordance with the individual's job description and person specification;
 - provide ongoing support and training;
 - ensure that the employee is aware when the Capability Procedure has been instigated and provide them with a copy of the procedure;
 - establish and agree performance improvement plans with the employee;
 - conduct the informal and formal stages of this procedure.
- 6.2 It is an employee's responsibility to:
- participate in the objective setting process;
 - achieve objectives and targets as required by Solihull MBC;
 - work towards supporting the Council's 'Solihull Way' of working;
 - perform to the best of their ability.
- 6.3 It is the responsibility of HR to:
- provide advice and guidance to managers and employees to ensure that the capability procedure is followed correctly;
 - support managers/Head Teachers, as necessary.
- 6.4 It is the responsibility of recognised Trade Union Representatives to accompany, support and advise an employee throughout the formal stages of the Capability Procedure, where requested.

7. Procedure

The three stages of the procedure are:

- Performance Improvement Support (Informal Stage).
- Formal Capability (Stage 1).
- Formal Capability (Final) Hearing (Stage 2).

7.1 Performance Improvement Support (Informal Stage)

Where an employee displays an inability to perform their duties satisfactorily, the Council/ School will attempt to resolve the matter informally in a meeting between the line manager/ Head Teacher and employee. Any shortfalls in performance require the manager/ Head Teacher to inform the employee in a constructive and supportive way, the nature of the unsatisfactory performance and how such performance will need to improve. A copy of the Capability Procedure should be made available to the employee.

The issues should be discussed promptly with the employee concerned and the causes of the shortfall identified. Examples of the shortfalls should be provided to the employee and consideration should be given as to whether the employee requires further training, supervision, support or guidance. If appropriate, measures should be taken to provide additional support and an improvement plan drawn up (see Guidance Document for what should be included in the [performance improvement plan](#)).

The aim of this stage is to support the employee at the earliest possible opportunity in order to improve their performance to the standard required. This may include:

- Regular supervision sessions
- Additional Training
- Feedback
- Support
- Guidance
- Work Shadowing
- Coaching
- Mentoring

It is recommended that the informal capability procedure is initially undertaken for a period of four weeks. Performance should be reviewed by the manager/Head Teacher and the employee on a weekly basis (or more frequently if necessary).

At the end of four weeks, a discussion will take place between the manager/Head Teacher and employee to review the progress being made and to specify any aspects of the performance plan that have not been achieved and remain outstanding. A further period of four weeks will be allowed to achieve these improvements.

At the end of eight weeks, the informal stage can be extended further but only where the employee can demonstrate and evidence a significant improvement in their performance and is making progress towards achieving their improvement plan. This can only be extended for a further period not exceeding four weeks (i.e. total review period 12 weeks maximum).

In most situations, a constructive discussion around shortfalls in an employee's performance with a focus on the standards required will bring about improvements in work performance. If, however, such improvements are not forthcoming within the above timescales, the individual will be informed that their performance will progress to and be managed in accordance with Stage 1 of the formal part of the procedure.

Throughout the process it is vital that all meetings are fully documented and that all parties receive a copy of the notes.

Individuals who are being managed in accordance with this procedure are unlikely to receive any pay progression.

7.2 Formal Capability (Stage 1)

If, following conclusion of the informal stage, there has been no significant improvement then stage 1 of the formal procedure should commence.

The manager/Head Teacher must write to the employee informing them that a formal Stage 1 meeting will be held, giving at least 5 working days notice and providing them with a further copy of the procedure. The employee should be advised that they may be accompanied by a recognised Trade Union Representative or a workplace colleague at this meeting.

Discussions at the meeting should focus on clarifying the performance shortfalls, understanding any underlying causes, reviewing and agreeing a clear performance improvement plan, with outcomes and time-scales.

At the meeting the manager will:

- Remind the employee that this is a formal stage in the Councils capability procedure and failure to make the required improvements may lead to dismissal.
- Explain how the expected performance standards are not being met and what the expected performance standard is.
- Seek to establish the causes for the continued unsatisfactory performance.
- Review the performance improvement plan drafted in the informal stage and amend as required.
- Ensure that detailed notes of all meetings are kept and a letter confirming the outcome of the meeting is sent to the employee.

Following this formal review, if the required performance improvements have either not been met or not sustained the employee will be given a further opportunity of up to four weeks to make the required improvements. The employee will be advised that if the improvements are not forthcoming, there will be no alternative other than to proceed to the final stage (stage 2) and this may result in their dismissal. If appropriate, consideration should be given to the employee being placed on 'first consideration'.

At the end of the improvement period (up to four weeks) a discussion will take place between the manager and the employee. The employee will be informed that they have either achieved the improvement required or the matter will proceed to the final stage (stage 2).

If the employee has achieved the targets agreed within their performance improvement plan and reached the standards required, this should be recorded and placed on the employee's personal file within HR. If no further action is required the record will remain 'live' for 12 months. If, however, during this 12 month period, there is a further lapse in performance this will be resumed at the

stage in the procedure where it previously ceased. Depending upon the lapse in performance, it may be appropriate to move immediately to the Final Hearing Stage of the procedure.

Where employees possess a professional qualification, the Council has a responsibility to notify the appropriate professional body if there are serious concerns about an individual's ability to carry out their professional role and where there may be a danger to the public for example the Health and Care Professional Council (HCPC) for social care workers.

7.3 Formal Capability (Final) Hearing (Stage 2)

The employee will be given written notification, at least five working days in advance, of the date, time and place of the Hearing. This notification should outline the reasons for the hearing and include any relevant documents, e.g. copies of improvement plans. The employee should be advised that they may be accompanied by a recognised Trade Union Representative, or a workplace colleague.

7.4 The Panel

a) *Non-Schools:*

The hearing will be conducted by a panel consisting of two members, comprising of an SMBC Manager and a representative from HR, neither of whom will have previously been involved in the case.

b) *Schools:*

A panel of three Governors will be convened, one of whom will act as panel chairperson, and a representative from HR to provide professional help and guidance.

If the employee fails to attend the hearing, it may continue in their absence, unless a reasonable explanation for non-attendance is presented to the Panel. In that case arrangements will be made to reconvene the hearing within five working days. Continued non-attendance will result in the hearing being held in the employee's absence.

The employee's manager/ Head Teacher will provide evidence of the performance shortfalls and the panel will seek to establish why the shortfalls in performance have not been met. In certain circumstances the Chair may deem it necessary to adjourn the hearing to allow time for additional evidence to be presented to the Panel.

If, on the evidence offered, the Panel decides that a sanction should be imposed, the employee will be informed immediately of the details of that sanction. The decision will be confirmed, in writing, to the employee, normally within five working days.

At the Hearing the following sanctions may be applied:

- Improvement period extended.
- Alternative work* (downgrading/ transfer to an appropriate role).
- Re-deployment*.
- Re-training.
- Dismissal.

*These sanctions can only be considered where a suitable alternative vacancy exists.

The record of the Hearing, and any sanction applied, will normally be retained on the employee's personal file, located in HR, for a period of 12 months.

8. Alternative Work/Re-deployment

The availability of alternative work must be considered wherever possible, before action is taken to dismiss an employee. The employee may also be eligible to access "First Consideration", which is a list of positions available within the Council (see Stage 1). There may be other suitable job vacancies within the employees' current work area for which the employee has the appropriate skills. Each case will need to be considered on its merits. Employees may be given access to this process prior to the final stage. If at the end of the period no suitable vacancies have arisen and there does not appear to be any real prospect of redeployment or an employee has unreasonably refused alternative employment, the employees contract will be terminated on the grounds of incapability.

Where a trial period has been agreed this will normally be for a period of four weeks and may be extended briefly through agreement between the manager and employee on the basis that further training may be necessary.

The existence of long-term illness or disability, whilst not being material to the reason for invoking the Capability Procedure, may need to be considered when identifying alternative employment. There is a requirement to consider reasonable adjustment to take account of the impairment but not any capability problem that is not related to the impairment.

9. Appeals Procedure

An employee who wishes to appeal against formal action should complete the Appeal Pro-Forma [Appeal Pro-Forma.doc](#) and send this to the Head of Human Resources or, for schools, the Chair of Governors.

An appeal against dismissal should be sent to the Head of Democratic Services. Appeals should be sent within five days of receiving written confirmation of the sanction.

The sanction imposed as a result of the original hearing will remain in force unless and until it is modified as the result of the appeal.

The appeal will normally be arranged within ten working days of the receipt of the request. The employee will be given notification of the date, time and place of the appeal hearing and will be entitled to be accompanied by a recognised Trade Union Representative, someone nominated by them or work colleague.

Appeals against sanctions other than dismissal will be heard by an SMBC Manager, who has had no previous involvement in the case and is more senior to the person who made the original decision, together with a representative from HR. Appeals against dismissal will be heard by the Appeals sub-committee.

In schools this will be determined by the governance arrangements for hearing appeals.

The employee will be informed of the result of the Appeal decision, in writing, within five working days.