



Capability Procedure

Human Resources
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1 Statement

- 1.1 Stafford Borough Council must ensure that the necessary systems are in place to provide a framework within which the Council may support and guide all employees to improve their capability or competence and to deal fairly and reasonably in instances where employees cannot adhere to the required standards of performance.

2 Introduction

- 2.1 It is clear that most employees provide good and on many occasions excellent performance. However, sometimes employees may not perform to the desired standard as a result of a lack of capability or competence.
- 2.2 Although it may be difficult and uncomfortable for line managers to address these issues, it is essential they do so if the Council is to provide an effective service to the community.
- 2.3 This procedure for manager's details the steps to be followed when problems arise that appear to have their cause in the capability or competence of an employee to perform the duties for which they were appointed.

3 Definition

- 3.1 Capability relates to the inability of an employee to meet the required standards of the role due to insufficient skill level or aptitudes.
- 3.2 In order to distinguish whether an issue should be managed through either the **CAPABILITY PROCEDURE, SICKNESS ABSENCE or DISCIPLINARY PROCEDURE** guidance notes are attached at **Appendix A**.

4 Purpose

- 4.1 The objectives of this procedure are to provide line managers with the necessary information in order to:
- Make every effort to help and retain an individual with a capability problem, whilst recognising that Stafford Borough Council cannot guarantee to maintain employment.
 - Ensure employees are performing their roles effectively and capably and to deal with those employees not performing, in a fair and consistent manner.
 - Encourage sensitive, imaginative, realistic and constructive approaches from all concerned when dealing with capability issues.

- Clarify and confirm that the managerial responsibility for resolving capability problems rests with line managers who may receive advice from Human Resources and, as necessary, from the Occupational Health Physician.
- Ensure that capability difficulties are dealt with efficiently within agreed time periods (according to circumstances) and with clear outcomes at all stages.

5 Procedure

- 5.1 Capability covers all matters related to performance other than those aspects, which would fall within the probationary, or disciplinary/misconduct procedure and issues related to an employees health that would be dealt with through the Sickness Absence Policy. Examples of incapability would be associated with, drug/alcohol abuse, unsatisfactory performance, etc. This procedure should be followed where an employee is unable to carry out the tasks required to an acceptable standard because they do not have the skills or aptitude, competency to perform in the role effectively.

6 General Principles

- 6.1 This procedure applies to all employees except:
- probationary employees
 - Chief Officers (who are subject to separate procedures under the JNC Conditions of service)
- 6.2 Line managers should take any necessary and appropriate action if an employee does not achieve an acceptable level of general performance, standards or attendance in carrying out the duties of their post.
- 6.3 Employee representatives should be aware of the Council's policy on capability and the importance of ensuring consistent standards of performance. They will have a right of attendance at meetings held with employees within the informal/formal resolution stages of this procedure.
- 6.4 In cases of incapability the process seeks to:
- ascertain the reasons for the problem
 - and establish a means of resolving the problem
- 6.5 When the incapability is the result of a lack of required skills, the employee, the line manager and employee will be expected to agree, will be supported through appropriate training and development, and a reasonable period of time to reach the required standards of performance. The PDR process may initially identify any concerns regarding an individual's performance and then appropriate actions should be agreed between the manager and employee to

assist with meeting developmental needs. However, it is not necessary or appropriate to wait until the next R & D interview if issues arise.

7 Informal Resolution

7.1 Where there are concerns regarding an employee's capabilities, supervisors/line managers should initially meet with the employee to determine reasons for the unsatisfactory performance.

7.2 As soon as any apparent difficulty arises the line manager should have an informal discussion with the employee, concentrating on the following:

- Definition of issue/problem
- Standards of job performance required (realistic & achievable)
- Shortcomings in reaching these standards
- Exploring possible reasons for shortcomings
- Agreeing how and when acceptable performance might be achieved

Full account must be taken of the employee's own circumstances. The manager should explore fully the circumstances behind an apparent lack of capability (for example – seek to understand if any personal circumstances have contributed to the employees behaviour) and then give the individual every opportunity to present their explanation of the situation.

Options available at this stage would include:

- Training/retraining/development
- Referral, where appropriate, to Occupational Health or Employee Support Service
- Mentoring/coaching
- Closer supervision for a limited period
- Temporary alterations to duties which do not change the character of the job but allow the individual to develop at a slower pace

7.3 During the process a written record should be maintained by the line manager to include an agreed action plan to address the problem/meet the standards required. A clear programme of action and review dates must be agreed between the individual and line manager and a copy forwarded to Human Resources.

7.4 Consideration will be given within the process to any implications arising from the Disability Discrimination Act (1995). As part of the Action Plan, the employee may require access to employee support facilities. The Occupational Health Department may also be able to provide appropriate input.

7.5 The object of the informal stage is to alleviate or remove the problem after adequate time has been allowed for improvement or assessment. If, however, it becomes clear that regardless of further action acceptable performance in the post cannot be achieved within reasonable time scales, the matter should be referred to a higher level. The employee should be

advised of this and a formal procedure in accordance with Stage 1 below will be followed.

8 Formal Procedure

- 8.1 If improvements in performance are not achieved, the formal procedure will be instigated. In such cases the employee must be given notification in writing of an interview to be held under the procedure, within 10 working days after the informal stage is completed. The notification should also include details of the general nature of the matter and examples of the unsatisfactory performance, a copy of the Capability Procedure and the employee's right to be accompanied (by a union representative or a work colleague of their choice), together with any documentation from the informal stage.

9 Stage One

- 9.1 A formal interview to be conducted by a Senior Manager/Head of Service, attended by the employee, their companion, the line manager and a representative from the Human Resources Team. This part of the procedure should cover:

- Confirmation/exploration of the alleged unsatisfactory performance
- A review of set targets and timescales for improvement
- Impact of the shortcomings outlined
- Options on possible remedies, together with any appropriate training/retraining support.

The Line Manager will outline the above details to the Senior Manager/Head of Service and then the employee or representative will explain their position and comment generally on the information provided.

- 9.2 After the interview, all parties will leave the interview and the Senior Manager, in consultation with Human Resources, will review the situation fully and decide what action to take or recommend.

- 9.3.1 The Senior Manager/Head of Service will reconvene the meeting and advise all concerned of the recommended appropriate action. Review dates should be agreed between the Senior Manager/Head of Service, Line Manager and employee at the conclusion of the interview. The outcomes of the interview should be recorded and all concerned should clearly understand the recommended agreed actions. The employee should be issued with written First Stage Advice in the form of a letter with a recommended action plan attached. This will remain on the employee's personal file for a period of not less than 12 months and should be linked with update reports from the line manager commenting on developmental progress.

- 9.3.2 The application of the actions should be reviewed until the Senior Manager/Head of Service and Human Resources Manager are satisfied that either of the following apply:

- standard of performance is acceptable and likely to be maintained

or

- it is likely that despite action taken, the required performance will not be achieved in the contractual post or an alternative post.

At the final review if it is agreed that the objective may be reached by a short extension period, ie to complete training, then a revised review date should be agreed. The monitoring period will depend upon the particular circumstances of the case.

- 9.4 In the case of more serious performance problems, or where following the issue of previous advice there has been insufficient improvement, or any improvement has not been maintained, it will be necessary to proceed to Stage Two.

10 Stage Two

Advice: Where, without good reason, there has been little or no improvement

- 10.1 Where, after the agreed or extended period of time, improvement to the standard required has not taken place, the Senior Manager/Head of Service and Human Resources Manager will hold a further formal interview (arranged and held as in Stage 1) with the employee.
- 10.2 The employee should be advised at the interview that, having regard to all the circumstances and evidence available, termination on the grounds of capability is to be recommended. He or she should then be invited to respond.
- 10.3 Immediately following the interview the Head of Service and Human Resources Manager should recommend either of the following options and an impartial Director discuss the case with the Head of Human Resources and consider the options available:
- suitable alternative employment within the individual's capabilities within the Council, to include a "trial period", combined with a maximum of 12 months protection **or**
 - dismissal with notice or with pay in lieu of notice.

The decision should be communicated in writing to the employee within 3 working days and relevant correspondence retained on the personal file for 12 months.

11 Notice to Terminate the Contract of Employment

The Head of Human Resources will notify the employee, in writing, giving notice to terminate the contract of employment, the reason for the dismissal, the date on which employment will end and the right of appeal to the Council's Employees Appeal Committee. The notice period will be in

accordance with the statutory minimum, as specified in the individual's '*Written Statement of Particulars of Terms of Employment*', or '*contract of employment*' as it is more commonly known. Given that the working relationship may have become strained at this point, payment in lieu of notice may be arranged.

12 Right to be Accompanied – Role of the 'Companion'

- 12.1 The constructive purpose of the informal part of the procedure is to try to avoid recourse to the formal stages, unless it is necessary to do so.
- 12.2 In accordance with the Employment Relations Act 2002 employees have a statutory right to be accompanied by a companion. This companion will be a trade union official and/or a work colleague. However, if the employee chooses that both attend, the role of the work colleague will be to act as a silent observer.
- 12.3 If the employee chooses a work colleague or trade union official who for example, had a conflict of interest or whose presence may prejudice the meeting, the employee would be asked to choose an alternative companion.
- 12.4 If the employee's chosen companion is not able to attend the meeting an alternative date should be proposed to the employee. This must be within 5 days of the date arranged for the original meeting.

13 Probationary Period

- 13.1 New employees to Stafford Borough Council are subject to a six-month probationary period.
- 13.2 Although employees transferring from another Council are not normally subject to a further six-month probationary period, it is good practice for their manager to assess their performance in the early stages of their employment to determine whether they are able to do the job they were appointed to.
- 13.3 Further guidance on probationary period monitoring are dealt with in the Recruitment and Selection Procedure – Probationary Monitoring Guidance for Managers.

14 Ill Health

- 14.1 Ill health can affect employment in a variety of ways, for example:
 - prolonged sickness absence (see Sickness Absence Policy)
 - frequent short term and apparently unrelated sickness absence (for which there may be an underlying cause) (See Sickness Absence Policy)
 - conditions which might affect capability but which have little or no effect on attendance.

- 14.2 Where ill health is having an impact on a person's ability to carry out their job, and confirmed by Occupational Health the supervisor or manager must adhere to the principles set out in this document, referring at all times to the Council's Sickness Absence Policy.
- 14.3 Where ill health results in that person becoming disabled, as defined by Disability Discrimination Act, 1995, the supervisor or manager has a responsibility to make reasonable adjustments to the working environment, working practices and potentially to the terms and conditions of service within the contract of employment. In all such cases, the supervisor or manager must contact Human Resources for advice before taking any action.
- 14.4 In all cases, medical advice will be sought from the Occupational Health Physician, the employee's GP and associated specialists. In these cases it is important that management maintain regular contact should be maintained with the employee (in consultation with the appropriate HR advisor).

15 Personal Records

- 15.2 All notes and copies of correspondence in relation to an individual's performance shall be retained on their personal file for a period of 24 months. If, after this period, the situation remains unchanged these notes and correspondence will be destroyed.
- 15.3 If performance has not improved sufficiently, all records shall remain on file for a further specified period, as previously detailed above.

16 Procedure Review

The operation of this procedure will be periodically reviewed. Any amendment to it will be subject to consultation with the appropriate Unions.

17 Records

- 17.1 It is important to keep written records during each part of this process, these will be kept confidential, and retained in accordance with the Data Protection Act 1998.

CAPABILITY PROCEDURE

Is it **DISCIPLINE** or is it **CAPABILITY**?

1. To distinguish between 'tackling' an issue on the grounds of **CAPABILITY**, **SICKNESS ABSENCE** or **DISCIPLINE** the 'acid test' simply is to determine whether performance concerns are prompted by:

Skills, or aptitudes (ie can't do) = Capability Procedure

OR

Wilful conduct or misconduct (ie won't do) = Disciplinary Procedure

OR

Ill health, long periods of absence, or patterns of absence (ie unable to do due to reduced duration in the workplace) = Sickness Absence Procedure

2. As with the Disciplinary Procedure, the Human Resources Manager must be contacted before any **formal** application of the Capability Procedure ie **before** entering Stage 1.
3. It is imperative that the HR Manager/or his/her representative is involved throughout the informal stages as well as the formal stages of the Procedure. Supervisors and first-line managers are most likely to be the officers expressing original concerns over an individual's performance but before discussion with the individual, they should take advice from their own line manager (who will, where appropriate, discuss the details and the process with a senior member of the personnel team).

QUESTIONS AND ANSWERS

1. *What are the difficulties in following the capability procedure?*

It is recognised that the procedure is complex in order to reflect the many issues that may need to be addressed. It is important therefore that as a manager you give yourself the time to read and digest the procedure.

Problems occasionally occur when line managers fail to follow the procedure, whether through ignorance or by design. A failure to follow the procedure will be critical. For example, an Employment Tribunal could rule that an employee had been unfairly treated if the procedure was not followed.

It is important to recognise from the outset that a key principle of dealing with employee capability entails the need to give employees the opportunity to improve their level of performance. Opportunity in this sense means giving time to improve performance. The capability procedure seldom offers a 'quick fix' solution. Managers must therefore agree and understand the timescales involved.

Even the most experienced line managers find dealing with a capability problem to be one of the most difficult issues they face. People management skills will be tested to the limit. Not surprisingly, many managers find these issues particularly stressful. Please remember that Human Resources staff, and in particular the Employee Support Officer are there to help you.

2. *Should a companion always be present when I am discussing a capability issue with a member of support staff?*

It is good management practice to discuss performance issues with employees including those occasions where performance may fall below the standard expected. In the vast majority of these situations, employees will address the problem and the issue goes no further. Consequently many employees wish to keep these discussions private and not to be represented. **What advice is available to help guide managers through the capability procedure?**

Human Resources are always willing to lend any guidance, even for those matters that might seem trivial at first. Their involvement becomes essential at a certain stage of the procedure and indeed the Human Resources Manager/ or his/her representative might perform a valuable facilitation role.

3. *How does the Disability Discrimination Act affect this procedure?*

It can be unlawful to treat someone less favourably than another employee because of his or her disability. We need to take appropriate advice from the Occupational Health Physician for example, in order to find an acceptable solution.