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Version Control	Changes Made	Author
Version 1 April 2014	Refresh of presentation and format	People Management
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1. Introduction

The Capability Procedure will be used when employees require the support of their manager in meeting and maintaining a satisfactory of performance due to skill, aptitude, physical or mental ability. The emphasis in dealing with capability issues should be open and honest communication backed up by a jointly agreed assisted programme of support. This is aimed to restore the employees’ performance to the required standard.

This procedure has been developed not only to provide assistance for employees who are unable to meet the requirements of their existing post but also to recognise the changing nature and standards required from the post. It also seeks to ensure that the Council/School meets its legislative responsibilities including those associated with equality and diversity, health and safety and dismissal procedures.

2. Scope

This procedure applies to all employees covered by the NJC for local government employees, including school based support staff, and all other employees of the Council for whom there is

no other specific procedure laid down in national or local conditions of service, or where contractual conditions specify this procedure.

This procedure does not apply to cases involving ill health or conduct issues which are covered by the Absence and Wellbeing Procedure, Harassment Procedure or the Disciplinary Procedure.

This procedure does not apply to employees whose employment is to end during or at the conclusion of a fixed term/temporary contract or a probationary period of service (where dismissal arises from unsuitability for confirmation of appointment), or those subject to redundancy.

If concerns may be due to a lack of resource rather than an individual's performance please contact People Management and your Assistant Director to discuss further if appropriate. In a School setting please discuss as appropriate with Governors and/or HR Provider.

3. Principles

The Council /school seeks to achieve and maintain high standards of service delivery through its employees. In order to achieve this it has established standards and monitors performance whilst providing employees with appropriate support to meet those standards. This may include a review of the job requirements and working arrangements, counselling, training and coaching, and, in cases of sickness or medical incapacity, support from Employee Wellbeing Service / the school's chosen Occupational Health Service Provider

In dealing with cases of poor performance the Council distinguishes between:

- negligence, lack of application or attitudinal problems, where the Disciplinary Procedure is applicable
- health, where the Absence and Wellbeing Procedure is applicable
- lack of required training, or the changing nature of the job, where the Capability Procedure applies.

It would be expected that managers would meet with staff on a regular basis throughout the working relationship through supervision/one-to-ones/appraisals. This is an opportunity for both parties to raise issues and concerns which can be addressed at the earliest opportunity with support. It is also important that these opportunities are used to provide positive feedback to the employee.

There is an expectation that any difficulties would be addressed and resolved as part of the supervision/one-to-one and appraisal processes and that the Capability Procedure should only be used when such efforts have been undertaken and a more formal approach is deemed appropriate.

Should concern be raised regarding the relationship between the manager/Headteacher and employee, advice should be sought from People Management/School's HR Provider, in order to

ascertain if any other support is appropriate. In addition, if concerns over performance are connected to management issues, the case should be escalated to a relevant senior manager.

4. Responsibilities

It is everyone's duty to ensure that acceptable levels of performance are achieved and maintained and to take steps to rectify any shortfall.

Employees are expected to:

- Notify their manager/headteacher if they are unsure of what is expected of them or having difficulty in meeting the required standards of performance
- Undertake any training, coaching, counselling or other support offered to, or requested by them, to enable them to reach the required standard.
- Attend interviews, hearings or appeals as required.
- Engage with the alternative employment process should this be an agreed outcome of the formal interview stages. Employees will be supported in securing a post via the AEP, recognising that this is a joint responsibility between employer and employee. Community and VC Schools can also seek alternative employment from CCC as the employer

Managers/Headteachers are expected to:

- Provide appropriate support to enable employees to achieve the required standard
- Set appropriate and achievable standards of performance based on the requirements of the role.
- Provide supervision and undertake regular appraisals of employees' performance in accordance with the Appraisal Procedure
- Notify employees when they do not meet the required standard and investigate the causes
- Review the requirements of the post and consider whether more flexible working arrangements could be applied without detriment to the service level required
- Arrange meetings, hearings and appeals as required under the procedure
- Ensure that accurate records are maintained and secured in the employee's file.
- Maintain confidentiality
- Notify the employee of their right to be accompanied and encourage this
- Liaise with People Management/School's HR Provider to support the employee in securing a post via the AEP at the appropriate stage.
- Provide suitable learning and development opportunities to enable employees to perform their duties to the required standard
- Inform the employee that the Capability procedure may result in dismissal

People Management/HR providers are expected to:

- Advise managers/Headteachers on all aspects of this procedure
- Support managers/Headteachers in dealing with individual cases
- Monitor the application of the procedure to ensure that it is compliant with the Equality and Diversity Procedure and associated legislative requirements

- People Management will review the procedure to meet the requirements of new legislation and operational needs.

5. Process

5.1 Informal capability meeting

When the employee's manager/Headteacher recognises that the employee's performance is unacceptable he/she will hold an informal capability meeting with the employee to try to establish the reason(s). The employee may be accompanied at this meeting by a co-worker or trade union representative if he or she wishes and be given 5 working days' notice of this meeting, clearly stating that it is a meeting under the Capability procedure of which a copy must accompany the letter.

The manager/Headteacher should consider the following actions:

1. Ascertain if there are any specific reasons/problems behind the poor performance.
2. Review the standards of the post if they are not reasonably attainable.
3. Explain any new standards and provide help and retraining if the employee's problems arise from a change in the role or standards required in the post.
4. Provide counselling and support where the employee's problems relate to his or her personal life.
5. Provide additional support in the form of training, retraining or coaching.
6. Seek medical advice and referral to occupational health, as detailed in the Absence and Wellbeing Procedure if the poor performance is related to the employee's state of health.
7. Consider the provision of reasonable adjustments in accordance with the requirements of the Equality Act 2010.
8. Invoke the Alcohol and Substance Use Procedure if the poor performance appears to be related to alcohol or drug issues.
9. Invoke the Disciplinary Procedure if the employee's poor performance appears to be for reasons of conduct.

As a result of this meeting the manager/Headteacher may need to gather further information to determine which procedure is appropriate. **If, during the course of following the actions outlined in 1 to 8 above a manager/Headteacher realises that the capability procedure is unsuitable for the issues discussed, they must notify all concerned and adopt the appropriate one.**

If the reason for poor performance is for any of the reasons 1 to 4 above the employee will be provided with relevant support and their performance will be monitored by the

manager/Headteacher for an appropriate period of time. The circumstances of each case will be different and an appropriate timescale will be agreed with the employee and their representative at this meeting. This will usually be six to eight weeks however this may be amended if required. Managers/Headteachers should seek advice from People Management/School's HR Provider at the earliest opportunity

Employees should be provided with an action plan (CA1) containing details of the levels of performance required. This must be evidential and linked to specific required outcomes that can be measured in relation to the employees' job specification and role profile. The plan must also detail the support that will be provided to assist them in achieving this in the required timescales, for example training/support/mentoring.

This should form part of the above discussion and the employee should be given the opportunity to provide input into the action plan, including any support they feel may assist them. (refer to appendix for template action plan) The action plan must be agreed and any support employees feel may assist them must be recorded, considered and if not provided, an explanation must be given.

The targets set should be SMART – Specific, Measurable, Achievable, Realistic, Time constrained. If the manager/Headteacher requires any further guidance on appropriate targets/measures they should contact People Management/School's HR Provider for further guidance.

Details of the action plan and the discussion that has taken place with the employee will be recorded in writing as an advisory note that improvement is required (CA2). A copy of this will be provided to the employee and his or her representative.

Normal supervision/one-to-ones will continue throughout the duration of the action plan in order to ensure that the employee feels supported and receives timely feedback in relation to their role. Should appraisal targets require any adjustments in line with the action plan and support provided, this should be amended where appropriate

If the action plan is completed successfully the employee will be informed of this and the importance of maintaining the required standard of performance.

If there is some improvement that the Manager/Headteacher feels would benefit from an extension to the monitoring period this can be implemented with agreement from the employee. A minimum period for this is two weeks, however the agreed timescale will depend on the individual circumstances of the case. Managers/Headteachers should seek further advice from People Management/Schools HR Provider.

If there is no significant improvement in the employee's performance (as determined by progress made against the targets set on the agreed action plan) the manager/Headteacher will arrange a formal interview with the employee to review the situation. The employee must have five working days' notice of this meeting. The manager/Headteacher will inform the employee, in writing, of the expected standards of performance, where these are not being met and notify him/her of their right to be accompanied by a co-worker or trade union representative at the meeting (CA3).

It is recognised that this may be a difficult time for the employee therefore the appropriate referral should be made to Occupational Health /school Occupational health service if required at any time during this process.

5.2 Formal Interviews

At the formal interview the employee will be given the right to be accompanied by a trade union representative or co-worker, and the manager/Headteacher will seek to:

- Explain clearly the shortfall between the employee's performance and the required standard
- Identify the cause or causes of the poor performance and to determine what, if any, remedial action e.g. training, support, can be given
- Obtain the employee's commitment to reaching the standard by setting realistic targets
- Inform the employee what will happen if that standard is not met and that dismissal may be an outcome
- Set a reasonable period for the employee to reach the standard and agree on the operation of a monitoring system during that period, usually six weeks

First Formal Interview

A first formal capability warning will be issued in writing and will remain on file for 12 months. The employee has the right to appeal against this within 5 working days of receipt.

This and the outcome of this interview will be recorded in writing and a copy of this and the agreed action plan will be given to the employee (CA4). With the employee's permission, a copy will also be sent to their representative should they have one. Again, targets must be SMART and follow the guidance given in Section 5.1.

If the employee believes he/she is unable to meet the standard required, despite the assistance provided, redeployment, a reduction in hours or other alternative arrangements may be considered by the manager/Headteacher in liaison with the employee, his/her representative and People Management/School's HR provider.

Second Formal Interview

At the end of the review period a further formal interview will be held between the employee and his/her manager/Headteacher and co-worker or trade union representative.

At this interview:

- If the required improvement has been made the employee will be informed and encouraged to maintain the improvement. The employee's performance will be monitored and further formal review meetings will be arranged as agreed.
- If there is some improvement that the Manager/Headteacher feels would benefit from an extension to the monitoring period this can be implemented with agreement from the employee. A minimum timescale for this is two weeks, however the agreed timescale will depend on the individual circumstances of the case. Again, Managers/Headteachers should seek further advice from People Management/Schools HR Provider.
- If there has been no measurable improvement, the employee's manager/Headteacher will explain to him/her that they have failed to improve. At this point a final capability warning will be issued and will remain on file for 18 months (CA4). The steps set out in section 5.1 should be followed for a final monitoring period with action plan. The employee has the right to appeal against this within 5 working days of receipt.
- If, at the end of the final monitoring period, there is no measurable improvement against the final action plan the employee will be subject to the Capability Dismissal Procedure. In addition, the employee will also be eligible for alternative employment support and registered on the AEP.
- In a school based setting the Headteacher should in the first instance give consideration to any available positions within the school which would provide suitable alternative employment. For Community and Voluntary Controlled Schools only, the Headteacher should make contact with the local authority for access to the Alternative Employment Scheme and the council's job search support programme. For alternative posts identified, the employee will be able to have a trial period. If, following this, the new post is not suitable the employee will revert back to their original post and continue to access the Alternative Employment Scheme.

5.3 Capability Dismissal Procedure

The manager/Headteacher must write to the employee confirming the circumstances that are leading to potential dismissal and inviting them to a meeting to discuss the matter and advising them of their right to be accompanied by a trade union representative or work colleague. The employee will be notified of the meeting as soon as possible but must be given not less than five working days' notice in writing of the date, time and place of the meeting.

The manager/Headteacher will notify a senior manager in another service, who will conduct the meeting.

In a school based setting a dismissal due to capability will be dealt with by the Headteacher where Governors have delegated the power to dismiss.

If an employee first reports sick on the day of the meeting and the employee informs the council/school they are unfit to attend, the meeting will usually have to be postponed.

The matter may need to be referred to the Employee Wellbeing Service/School Occupational Health service Provider to obtain advice on their condition/fitness.

The meeting should then be rearranged according to this information.

Where an employee simply fails to attend his/her meeting he/she should be written to and informed of the following:

- (a) That the meeting has been rearranged for a specific later date and time.
- (b) That if they are unable or unwilling to attend the meeting, without good cause, the meeting will proceed in their absence.
- (c) A representative may attend in their absence to present their case.
- (d) Any written submission which the employee may wish to submit will be considered.

The employee and/or their representative will be given the opportunity to state their case. The manager and others who have been involved in providing support to the employee or seeking redeployment will provide information on what actions have been taken.

After the meeting the senior manager must notify the employee in writing of the decision and notify the employee of their right to appeal against the decision if they are not satisfied with it. This will include details of the senior manager who the appeal should be addressed to.

If a sanction short of dismissal is issued such as demotion, this is on the basis that there is a vacant role for the employee to move into.

For County Council staff, where the senior manager decides that capability dismissal is the appropriate outcome, the employee should be given their notice, and informed of their right of appeal to the Staffing Committee. School based staff should submit an appeal in writing to the Chair of Governors

If the employee does wish to appeal they must inform the relevant senior manager within 5 working days of the date of notification of the decision of the meeting. The appeal will be acknowledged within 5 working days.

Where the action proposed is short of dismissal, e.g. transfers, demotion or alteration of duties, as a result of the application of this procedure, the employee will be invited to a further meeting to hear their appeal. They must take all reasonable steps to attend. Employees have the right to be accompanied by a trade union representative or work colleague at this meeting.

For County Council employees, where the action proposed is capability dismissal the employee will be invited to have their appeal heard by the Staffing Committee. Employees have the right to be accompanied by a trade union representative or work colleague at the Staffing Committee.

The employee will be informed in writing of the outcome of their appeal.

There is no further right of appeal.

