



Human Resources

CAPABILITY POLICY AND PROCEDURE



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1. Introduction

Surrey Heath Borough Council ('Council') recognises that it is important to ensure that all employees know what is expected of them with regards to their work performance standards. The Council aims to ensure that all employees failing to meet the required standards have assistance and support to improve performance wherever necessary. However, where employees are underperforming it is their responsibility to take whatever action is necessary to improve their performance. This procedure provides a framework for dealing with cases of poor performance in a fair, supportive and consistent way.

2. Scope

2.1 This policy applies to all employees at the Council. This policy and procedure runs parallel with, but is not part of, the Disciplinary Policy and Procedure. If the reason, or part of the reason, for incapability is ill-health of the employee, the Manager will move to the [Sickness Absence Policy](#) [Attendance Policy](#) and Procedure.

~~2.2 If capability action is being considered against an employee who is a trade union representative the normal capability procedure will be followed. However, after obtaining the employees consent a representative from Human Resources will discuss the matter at an early stage with an official employed by the union.~~

3. Policy Statement

The Council believes that poor performance is not acceptable and will be addressed in a reasonable, timely and constructive manner. [The council is keen to enable employees to work effectively and will take steps to address any issues](#)



~~that arise without disciplinary action. The Council recognises that poor job performance and incapability should not be treated as “disciplinary offences”. However, if performance or standards are not met, the option to dismiss remains, as a last resort. Under law, capability (defined either as performance or attendance related) constitutes a fair reason for dismissal.~~

4. ~~Definitions~~ Assessment of capability

~~The term “capability” refers~~ relates to an employee’s ability to do their role. This is assessed by their ability, aptitude, behaviours, competence, knowledge health and skills, ~~ability, aptitude, behaviours, competence and knowledge in relation to the job that they are employed to do.~~

Right from the start, an assessment of capability is made during the recruitment process. All employees are provided with an induction to welcome them into the council, familiarise themselves with council policies and procedures and support them to settle into the councils ways of working. Training needs will be discussed during the probationary period through meetings that are arranged during that time, to ensure the new starter’s training requirements are met.

Capability is continuously assessed during employment but specifically through one to one meetings and the appraisal process. During these meetings, line managers will raise any concerns with an employee’s performance and the employee may raise any issues or concerns they have with their line manager.

~~Incapability is where the employee has received all necessary training but still cannot achieve a satisfactory level of performance through no fault of their own,~~



~~for example as a result of poor health.⁴ However, if the employee fails to reach the required standard of performance as a result of carelessness, negligence or lack of effort, this will be treated under the disciplinary procedure as misconduct.~~

5. Equality Assessment Policy

The Council's Equality Scheme demonstrates its commitment to equality internally and externally and ensures that all sections of the community are given an opportunity to contribute to the wellbeing of the community. An equality impact assessment has been carried out on this policy and procedure.

The Council ensures that consultation is representative of the community and that consideration is given to how to consult hard to reach groups and to learn positively from responses.

6. Principle and Aims

6.1 This policy and procedure will aim to resolve performance problems by providing appropriate support to enable the employee to perform to the standard required. Sometimes the distinction between capability and conduct may become blurred and therefore it is important to distinguish between them as early as possible to ensure that the correct procedure is used. Managers should contact Human Resources for guidance for clarification where necessary.

6.2 The disciplinary policy will be applied in cases where performance issues are judged to result from conduct. If after starting this procedure the ~~mm~~manager, after consulting with Human Resources, considers that the capability case should

⁴~~Poor health is defined as a period of ill health absence or incapability due to sickness.~~



have been dealt with under an alternative procedure the case may be transferred to a different procedure.

6.3 All those involved in this procedure must ensure that they maintain the confidentiality of the process as appropriate within and outside the Council. However, disclosure of information by any of the parties involved might also occur where this is required under law or where there is a circumstance involving a duty of care which requires disclosure.

7. Roles and Responsibilities

~~7.1 The Council~~

The Council is committed to ensuring that all employees have the appropriate skills, competence and aptitude to carry out their roles effectively.

7.2 Managers

~~7.2.1~~ — All employees should be supported by their managers so they can perform at their best. It is the responsibility of all managers to monitor their employees and ensure that they understand what is expected of them with regard to their work performance. Managers are expected to:

- Ensure their employees understand the requirements of their role including full understanding of relevant policies
- Monitor the performance of employees through 1-2-1 meetings and appraisals. Capability issues raised by the employee or identified by the manager during these meetings should be documented.
- Ensure that employees are given the necessary training, support and instruction to effectively carry out their role



7.2.2 In the first instance, Managers should seek to resolve performance issues informally and as they arise.

7.2.3 Managers, after consulting with Human Resources, should consider whether an employee may be considered to have a disability under the Equality Act 2010. It may be necessary to ask the employee to authorise Access to Medical Records and/or see Occupational Health.

7.3 Employees

Employees should work effectively, performing their duties to a high standard.

All employees have a responsibility to comply with this policy and procedure and:

- Participate in I:1's and the appraisal process, and to engage in objective setting and review
- ~~Address any issues with their managers which may be affecting their performance~~

Take full accountability for their own performance and behaviour.

- Raise any concerns and communicate any struggles with their manager to enable steps to be taken early to address any support or training needs

7.4 Human Resources

Human Resources will provide guidance and support to both mManagers and employees in resolving any capability issues that may arise. ~~with regards to the issues and procedures.~~ The role of Human Resources will be to ask questions, provide procedural advice and take notes at formal capability meetings.



8. Capability Procedure

8.1 At each stage in the procedure, an employee will be ~~told~~ informed about the performance issue and will be given an opportunity to state their case before any action is taken. Also, at any stage of the formal procedure a manager may consider a range of options including:

- Providing appropriate training and development opportunities
- Returning to an informal approach
- Moving to an alternative Council procedure

8.2 There are four stages of the Capability policy (See Appendix 1) and these are as follows:

- Informal Stage – Informal Meeting
- Formal Stage 1 – Capability Meeting
- Formal Stage 2 – Capability Meeting
- Formal Stage 3 – Capability Case Hearing

8.3 The Council has the discretion to escalate through to any formal stage without the need to go through all the stages detailed above. Examples of such may include the following but this is not an exhaustive list:

1. Serious error that has led (or could have led) to serious reputational or financial damage to the Council
2. Involved in capability process but is failing to engage in a reasonable and timely manner
3. Has experienced a long term attendance issue that is impacting the job description and impact on future service delivery is uncertain even with reasonable adjustments



8.4 Records will be treated as confidential and kept in accordance with the Data Protection Act 2018 and General Data Protection Regulation.

9. Informal Procedure

9.1 The aim of the informal stage is for the ~~employee's manager~~ employees manager to ~~bring raise any capability concerns regarding an employee's performance to the attention of the~~ with the employee ~~employee.~~, giving them the opportunity to comment on the performance concerns and identify areas of improvement.

9.1.2 As this is regarded as informal action, neither the employee nor the employee's manager will be accompanied nor will the right of representation exist. -The reason for this is that the purpose is to try and resolve concerns on a one to one basis informally.

9.1.3 At the informal meeting the manager will discuss and highlight:

- The nature of the concerns
- The expected standards of performance
- The employee will be asked to explain possible reasons for the underperformance
- Any necessary actions or support required to be carried out by the employee or manager to aid improvement will be explored. This could be training, coaching, mentoring or the creation of a Performance Improvement Plan (PIP) for the employee.

9.1.4 A Performance Improvement Plan (PIP) may be set for the employee to include short term objectives with specified timescales for improvement and review dates (normally a minimum of 4 weeks and a maximum of 12 weeks).



These review meetings are held to provide feedback on the progress of the PIP and will be held on a 1:1 basis. The employee will not have a right to be accompanied at these meetings.

9.1.5 The manager ~~will inform the employee that if the required improvement has not been achieved following the informal capability review period, at the end of the informal meeting will explain that then~~ the formal stages of the Capability Policy may be implemented. ~~if the employee has not achieved the required improvements in their performance.~~

~~9.1.6~~ Possible outcomes after the informal meeting are as follows:

- The employee has met the required improvement in their performance and their manager will encourage the employee to continue with this performance ~~standard but will also~~ and will remind them that they need to maintain this level of performance.
- ~~a)~~ The manager may decide to extend the review period for a reasonable time period.
- ~~b)~~ If there has been insufficient improvement, or if there is further underperformance, the formal stage of the Capability Policy will be implemented at Stage 1.

10. Formal Procedure – Stages 1-3

10.1 Stage 1 – Formal Capability Meeting



10.1.1 When the informal approach to improve the employee's performance has been unsuccessful the manager will arrange a formal meeting with the employee to discuss the issues.

10.1.2 An employee will normally receive a minimum of **5** working days written notice of any formal capability meeting. This letter will include the following:

- The concerns regarding the employee's performance.
- The details of the meeting including the date, time and location.
- Who will be present at the meeting.
- Any relevant documentation

~~outline the performance issues to be discussed and the employee will be provided with any relevant documentation.~~

10.1.3 The employee may also submit documentation for consideration, which should be submitted to the manager at least **2** working days before the date of the meeting.

10.1.4 All employees will have the right to be accompanied by a Staff or Trade Union Representative or appropriate colleague who is not connected in the case at these meetings. Please contact Human Resources for further guidance and clarification. Managers will be accompanied by a representative from Human Resources. The role of a representative from Human Resources will be to ask questions, provide procedural advice and take notes.

10.1.5 During~~At~~ this meeting the manager will explain and discuss:

- ~~The nature of the concerns~~



- The expected standards of performance and why the manager feels these have not been met

- To try and establish the possible causes for the shortfall in performance. he possible causes for the shortfall in performance

The support which has already been provided as part of the informal process and investigate-identify what other support may be required by the employee in order to improve their performanceee

- Allow the employee to have the opportunity to challenge and/or put forward any facts and evidence for consideration

Confirm that the employee is clear as to the concerns about their performance, the standards that are reasonably required, and understands the particular areas where there are shortfalls.

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10.1.6 The possible outcomes from this meeting could be:

a) The informal stage will continue for the employee

b) That there will be no further action at this time

c) However, if the employee is unable to provide a satisfactory explanation for the underperformance they will be advised of:

- The performance improvement required with timescales for the improvement and the consequences of not meeting these targets
- The employee will verbally be advised that a **Written Warning** will normally be issued in writing within **5** working days
- The employee will also be advised of their right of appeal
- A copy of the letter will be retained on the employee's personal file for **12** months.

10.2 Formal Stage 2 Capability Meeting



10.2.1 This stage of the procedure will apply if the employee fails to meet the performance targets set in the Written Warning at Formal Stage 1. The employee will be invited in writing to attend a Formal Stage 2 meeting with at least **5** working days' notice. –[This letter will include the following:](#)

- [The concerns regarding the employee's performance.](#)
- [The details of the meeting including the date, time and location.](#)
- [Who will be present at the meeting.](#)
- [Any relevant documentation](#)

~~This letter will outline the performance issues to be discussed and the employee will be provided with any relevant documentation.~~

10.2.2 As at Formal Stage 1, all ~~employees will have~~[employees have](#) the right to be accompanied by a Staff or Trade Union Representative or appropriate colleague who is not connected in the case at these meetings. Please contact Human Resources for further guidance and clarification. Managers will be accompanied by a representative from Human Resources. The role of a representative from Human Resources will be to ask questions, provide procedural advice and take notes.

10.2.3 At this meeting the manager will discuss the performance issues that have led to the meeting and will review the actions that resulted from the Formal Stage 1 meeting. As at Formal Stage 1, the employee will have the opportunity to challenge and/or put forward any facts and evidence for consideration.

10.2.4 The possible outcomes from the meeting could be:

- a) That there will be no further action at this time
- b) That there will be an extension to the timescales for improvement in the employee's performance



c) However, if the employee is unable to provide a satisfactory explanation for the underperformance they will be advised of:

- The performance improvement required with timescales for the improvement and the consequences of not meeting these targets
- The employee will verbally be advised that a **Final Written Warning** will normally be issued in writing within **5** working days
- The employee will also be advised of their right of appeal
- A copy of the letter will be retained on the employee's personal file for **24** months.

10.3 Formal Stage 3 – Capability Hearing (Final Stage)

10.3.1 If the employee's performance still fails to improve after a Final Written Warning they will be invited to a Capability Hearing which is the final stage of the Capability Policy. –The aim of this meeting is to enable all parties to fully present their case to ~~an Executive Head~~ [Strategic Director or Head of Service](#) for consideration and decision as to the next steps.

10.3.2 This stage of the procedure will apply if the employee fails to meet the performance targets specified in the Final Written Warning as set at Formal Stage 2. The employee will be invited in writing to attend a Formal Stage 3 Capability Hearing with at least **10** working days' notice. –This letter will outline the performance issues to be discussed and [explain](#) that this is the final stage of the Capability Policy which could potentially lead [to](#) termination of employment.

10.3.3 As at Formal Stage 2, all employees will have the right to be accompanied by a Staff or Trade Union Representative or appropriate colleague who is not connected in the case at these meetings. Managers will be accompanied by a representative from Human Resources. –The role of a



representative from Human Resources will be to ask questions, provide procedural advice and take notes.

10.3.4 A summary report from both management and employee must be submitted no later than 2 working days prior to the scheduled Capability Hearing. Both parties have the right to call witnesses, and confirmation of their attendance must be provided 2 working days before the scheduled Hearing date.
~~No later than 2 working days before the scheduled Capability Hearing both parties (management and employee) will provide a summary report to the other parties. Both parties are entitled to call witnesses and confirmation of attendance must be provided 2 working days before the scheduled Hearing.~~

10.3.5 The employee's line manager will usually present the 'management case'. The employee and their representative should present the employee's case.

10.3.6 The ~~Executive Head~~Strategic Director or Head of Service will consider all the facts and any representations made and possible outcomes could be as follows (this list is not exhaustive):

- That there are no or insufficient grounds to dismiss the employee
- That an alternative procedure should be followed
- That the Final Written Warning should be extended
- That the employee should be dismissed on grounds of capability

10.3.7 The decision will be given verbally, wherever possible at the end of the Hearing and this will be confirmed in writing within **5** working days. The employee will also be advised of their right of appeal.



11. Appeals

11.1 If an employee would like to appeal against the decisions made in the capability meetings or [capability](#) hearing they should write to the appeals officer named in the capability outcome letter. The appeal letter must be made within **10** working days of receipt of the capability outcome and include the grounds for their appeal.

11.2 The appeal will be dealt with impartially and by a senior manager who has not previously been involved in the case. **See Appendix I for further information.**

11.3 Appeal meetings will normally take place within **10** working days of receipt of the employee's written notice of appeal. In exceptional circumstances the Appeal meeting may take place after thirty days.

11.4 The employee will receive written notice of the appeal meeting in writing at least **5** days before the meeting and will include the following:

- [The details of the appeal meeting including](#) the date, time and location ~~of the appeal meeting~~
- [The](#) right to be accompanied by either a Staff or Trade Union Representative or colleague of their choice
- [A](#) request to be advised of the identity of the individual accompanying the employee;
- [W](#)hether reasonable adjustments may be needed for the employee or their companion;

11.5 Upon conclusion of the appeal meeting, the Appeals Manager will provide the employee with written notification of the decision of the appeals panel, within **10** working days. The Appeal Chair's decision is final.



12. Appendix I

Authority to Act – Capability Policy and Procedure

Stage	Action	Responsibility	Appeals
Informal Stage	Meeting with the employee	Immediate Manager (or nominated manager)	
Formal Stage 1	Capability Meeting	Immediate Manager (or nominated manager)	A senior manager (or nominated manager)
Formal Stage 2	Capability Meeting	Immediate Manager (or nominated manager)	A senior manager (or nominated manager)
Formal Stage 3	Capability Hearing	<u>Executive Head/Strategic Director, Head of Service</u> or Chief Executive	A senior manager. Wherever possible <u>the manager presiding over the appeal will hold a more senior position than the manager who chaired the Capability Hearing with no previous involvement in the case. the manager hearing</u>



			<p>the appeal will be senior to the manager who chaired the Capability Hearing, with no previous involvement in the case. Where appropriate the Head of Legal or Executive Head of Transformation will hear Appeals.</p>
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NB: For statutory officers please refer to the Officer Employment Rules at Part 4 Section J of the Council's Constitution

