

## CAPABILITY POLICY AND PROCEDURE

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### 1. Introduction

The objective of this policy and procedure is to help and encourage all employees to achieve and maintain high standards of job performance and to ensure that the Council has fair and effective arrangements in place for dealing with work performance and capability matters. The Council is committed to ensuring that all staff have the appropriate skills, knowledge, competence and aptitude to undertake their role effectively.

Where employees are performing below expectations then the objectives of the procedure are to:

- Work closely with the employees to provide support to improve performance to an acceptable level.
- Ensure that there is a fair and formal process to deal with problems of underperformance whilst recognising the Council's separate procedures for dealing with discipline and ill health.
- Ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues.
- Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees.

### 2. Scope

This policy and procedure will apply to all members of staff with the exception of:-

- Employees who are serving a probationary period including any extended period.
- Employees on casual contracts.
- An employee who is under assessment for ill-health early retirement.

Where action is necessary in respect of an employee within the first twelve months of employment but outside the probationary period, such action may commence at stage 3 of the procedure regardless of the seriousness of the issue. Managers should consult with Personnel prior to taking such action.

### 3. Capability or Discipline

The Council, as with any employer, expects its employees to apply their knowledge, skills and experience diligently and exercise reasonable care in order to carry out their duties to a satisfactory standard.

With this in mind, the Council recognises the difference between:

- a deliberate failure on the part of the employee to perform to the standards of which he/she is capable, whether through carelessness, negligence or lack of effort, amounting to misconduct in which case the Disciplinary Procedure will apply; and
- a case of incapability, where an employee is lacking in knowledge, skill or ability and so cannot carry out his/her duties to the standard required, in which case the Capability Policy and Procedure will be applied in an attempt to improve performance to a satisfactory standard.

In some cases the cause of underperformance may not be entirely clear and there may even be an element of both. In most such cases the employee will be given the benefit of the doubt and the Capability Procedure will be used, though in exceptional cases the two procedures may be run in parallel. Personnel can provide advice in such cases.

### 4. Capability, Ill-Health and Disability

#### 4.1. Ill-Health

Ill-health may well be a cause of incapability and may manifest itself as either persistent short term absence or as a chronic condition causing long term absence and/or rendering the employee incapable of carrying out some or all of his/her duties. In most cases the Managing Attendance Policy will be utilised to deal with such cases and if there is doubt as to which applies then Personnel can provide advice.

Where it is anticipated that an employee may qualify for ill-health early retirement and the Occupational Health service has been asked to assess this, with the employee's agreement, then no further formal action under this policy and procedure will be taken until the outcome is known.

#### 4.2. Disability

When dealing with disabilities it should be borne in mind that a disability is not the same as ill-health and indeed someone with a disability may have excellent attendance and be capable of performing their duties to a high standard. It is also a fact that most people with a disability develop that disability during their lifetime so this may well happen during the course of their employment.

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#### Personnel Services

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Where the disability is affecting the capability of the employee concerned then due consideration must be given to the provisions of the Disability Discrimination Act and efforts must be made to identify and act on any reasonable adjustments which would enable the employee to perform their duties to a satisfactory standard. This may include adjustments to the workplace, equipment, work content, attendance arrangements or consideration for other posts which the employee concerned may be more capable of carrying out successfully. Whilst these measures are under consideration any action under this policy and procedure will not normally proceed to the formal stages. However, once reasonable adjustments have been considered and where appropriate made, then this policy and procedure will apply as for any other employee.

In dealing with disability issues managers are advised to seek advice from Personnel who will in turn involve Occupational Health and the Risk and Health and Safety Advisor as necessary.

### **5. General Principles**

The following guiding principles apply throughout the procedure:

- At every stage of the procedure the employee will be advised of the nature of the concerns about his or her capability and will be given the opportunity to state his or her case before any decision is made.
- At all formal stages of the procedure the employee will have the right to be represented by a trade union representative or work colleague.
- At all formal stages of the procedure, notice of any impending meetings will be sent in writing to the individual and will allow reasonable time for the individual to prepare.
- Although the same standards of performance apply, no formal action will be taken against a recognised trade union representative until a full-time official of the union concerned has been informed of the circumstances of the case.
- The employee must make reasonable effort to attend meetings and if there is any difficulty, notify the Council and agree a mutually acceptable date and venue to enable meetings to take place within an acceptable time of the issue being raised.
- If the employee fails to attend within a reasonable time then the Council will notify the employee, in writing, of the final date at which the meeting will take place and, if there is no acceptable response, will hold the meeting or appeal in the absence of the employee.
- Any written evidence relevant to the formal process will be forwarded to the individual prior to any formal meeting taking place.



- An employee will have the right to appeal against any formal warning issued under the procedure.
- In all cases, consideration will be given to the provision of relevant support, guidance and/or training, redeployment where appropriate in the circumstances, to help the employee to achieve the required improvement.
- It is intended that in the vast majority of cases the standard sequence of stages of the procedure will be followed. However, where the incapability has serious or potentially serious repercussions e.g. financial loss, damage to the reputation of the Council or to the health and safety of staff or members of the public, then the procedure may be instigated at any Stage up to and including Stage 3.

### 6. Informal Action

Managers are responsible for standards of performance of their staff and are strongly encouraged to tackle problems at an early stage to try to correct any unacceptable performance promptly and informally before it becomes a serious concern. Such action is not a formal part of the Capability Policy and Procedure but may be referred to if subsequent formal action becomes necessary. As such the following points should be borne in mind when taking informal action:

- The meeting must be in private and the employee given reasonable notice that the meeting will take place.
- As the meeting is not part of the formal procedure, there is no right to be accompanied or represented.
- If, during the meeting, it becomes apparent that the unacceptable performance is more serious than was first thought, or the employee is not receptive to advice or is uncooperative, then the manager will suspend the meeting and inform the employee that the matter will now be dealt with in the formal capability procedure.
- The employee will be informed in writing of the findings of the meeting including any agreed action plans, standards to be achieved, time frame for improvement and likely future reviews. A copy will be kept by the employer. The manager will keep a record of any documents used in the meeting and notes made.

The meeting is an opportunity to discuss any concerns in an open and supportive manner and the supervisor/line manager should encourage the employee to be frank about any factors which may be contributing to the underperformance. The meeting will normally cover the following:



- Make the employee aware that he/she is not performing to the required standard. This should be demonstrated by specific examples rather than just generalisations.
- Explore the reasons for underperformance noting any explanations that the employee gives.
- Identify areas for improvement citing specific objectives and time frame during which performance will be closely monitored.
- Consider what support can be given, including training, adjustments to workload, work practices or work patterns and what actions the employee can take and commit to.
- Ensure that the employee is aware of support services such as the Occupational Health service and the contracted counselling service if there are factors e.g. personal problems, affecting performance.
- Agree targets for improvement and specify what further action may be taken if improvement targets are not met.
- Any other information or proposed actions which may be relevant.
- Set the proposed time period for reviews of progress.

At any follow up review meetings, if performance has improved to a satisfactory standard then the employee should be congratulated, told that this is the standard now expected and informed when any close monitoring will cease. If there has been no or insufficient improvement then the supervisor/line manager will inform the employee that the issue will now move to the formal stages of the procedure.

### **7. Formal Stages**

The formal stages consist of stages 1, 2 and 3 Capability Meetings.

Following a sustained period of underperformance, or if an employee has improved during the informal action but then lapsed again, the matter will be referred to the formal procedure.

#### **7.1. Stage 1 - Capability Meeting**

The employee will be informed in writing of the meeting giving reasonable notice and advising of the right to have a trade union representative or work colleague present.

In the meeting the subjects as suggested under the Section 6 – Informal Action will be discussed and if it is decided that there is a continuing concern, then plans will be drawn up for achieving improved performance including actions the employee can take and the support the Council can provide.



The employee will be informed that his/her performance will be closely monitored and that reviews will take place and the time set for the first review which will normally be between 2 and 4 months after the Capability Meeting allowing time for any support or training and efforts by the employee to take effect. Note that should performance deteriorate or the employee is clearly not trying to improve then the review may be called earlier and this should be made clear to the employee.

The outcome of the meeting will be confirmed by the manager in writing within five working days of the meeting. This will be classed as a capability warning and will advise the key points of underperformance, proposed actions from the meeting, the length of the initial close monitoring period and the likely timing of formal reviews. The letter will also warn that failure to improve will lead to further action and may ultimately lead to dismissal and will advise of the right of appeal. A copy of the letter will be placed on the employee's personal file.

### Reviews during the Close Monitoring Period

The first review meeting should be arranged as close as possible to the stated time period giving reasonable notice to the employee. The meeting should examine progress against the planned action, including support measures, and be as supportive as possible where it is clear that the employee is striving to improve. At the end of the meeting the manager may decide:

- That the employee now fully meets the required performance standard and the close monitoring period will now cease.  
or
- That, although there is noticeable improvement, performance is still below the required standard. The close monitoring period will continue, with any further agreed support, and the timing of the next review is notified.  
or
- That performance has not noticeably improved or has deteriorated and a meeting under the next stage of the procedure will be arranged.

The employee should be congratulated on meeting the required standard or on progress made to date where appropriate. It should be explained that performance at the required standard or continued improvement towards it, must be sustained.

In exceptional cases where performance has not improved or has deteriorated and the employee is clearly not making an effort to improve performance then the manager may wish to refer the case directly to the final stage 3 of the procedure. The manager must seek advice from Personnel if contemplating such a decision.



The employee will be informed in writing of the outcome of the meeting including arrangements for a meeting at the next stage where appropriate. Where no further action is required the decision will remain 'live' for one year and therefore if satisfactory performance proves to be only of a temporary nature then the manager has the option of returning immediately to this point in the procedure.

### 7.2. Stage 2 – Capability Meeting

If there is little or no improvement under stage 1 after allowing a reasonable time for improvement and reviews, or if the underperformance is more serious but not sufficient to warrant a stage 3 meeting, then a stage 2 meeting will be arranged.

This will follow the same procedure as for stage 1 including notification of meetings and outcomes and setting close monitoring periods and reviews. In addition and whether any discussion has taken place at previous stages or not, consideration will be given to amending the job content or redeployment, where feasible, to a post which it is anticipated that the employee can perform to a satisfactory standard. However, any such considerations should not adversely affect the efficiency of the service and if any agreed changes affect the grade of the post, or redeployment is to a lower grade post, then salary protection will not apply.

The capability warning letter issued at this stage will advise that if performance does not improve to a satisfactory standard then the matter will proceed to stage 3 of the procedure at which dismissal may take place. A copy of the letter will be placed on the employee's personal file.

### 7.3. Stage 3 – Capability Meeting

If the previous stages have failed to resolve the problem then a Stage 3 Capability Meeting will be convened. The employee will be informed of the meeting in writing as for previous stages and it will be made clear that the outcome of the meeting may be dismissal.

At the meeting, once established that all reasonable steps have been taken and taking into account any further evidence and submissions, the meeting may decide:

- To refer back for a further period of close monitoring and review possibly with further actions to support improved performance. This may include changes to the job content or redeployment where applicable.
- To dismiss on capability grounds

The outcome, including the right of appeal, will be confirmed in writing to the employee within five working days of the meeting.



### 7.4. Minimum levels of Authority required to take action:

Informal Action	Immediate Supervisor/Manager
Stage 1 Capability Meeting	Section Head
Stage 2 Capability Meeting	Head of Service
Stage 3 Capability Meeting	Director

At all formal stages a Personnel representative will be present to provide advice and guidance.

### 8. Appeals

At all stages of the formal procedure the employee will have the same right of appeal as specified in the Disciplinary Procedure. This will be explained at the meeting and in the written confirmation. Appeals should be notified, in writing and outlining the reasons for the appeal, to the Head of Human Resources within 5 working days of receiving the written confirmation.

Appeals against dismissal will be conducted by the Council's Personnel Panel which will be provided with appropriate procedural and legal advice.

### 9. General Notes

- 9.1. References to Head of Human Resources shall include any person acting on his/her behalf.
- 9.2. References to Personnel representative shall mean a person of at least Personnel Officer level or equivalent.
- 9.3. Where examples, including lists, are given these are intended to illustrate typical circumstances and are not exhaustive or exclusive.
- 9.4. Redeployment or adjustments to workload, work practices or work patterns will be subject to the availability of suitable posts or what is reasonable and feasible taking into account the need to maintain consistent service standards.
- 9.5. If advice is required on the interpretation or use of this policy please contact the Personnel section.



### **10. Mediation**

In the event of mediation being required regarding the application of this policy an individual should raise their concerns with Personnel. Where this fails to produce a resolution the individual may utilise the grievance procedure. The use of mediation or the grievance procedure does not extend to where formal action has been taken as a separate appeals procedure exists for this purpose.

### **11. Equality and Diversity Statement**

South Hams District Council is committed to promoting equality and valuing diversity in everything we do including service delivery and employment. Further details can be obtained by referring to the Equality and Diversity Statement in the staff handbook and on the Intranet.

