

# **MANAGERS' GUIDANCE**

## **PERFORMANCE CAPABILITY PROCEDURE**

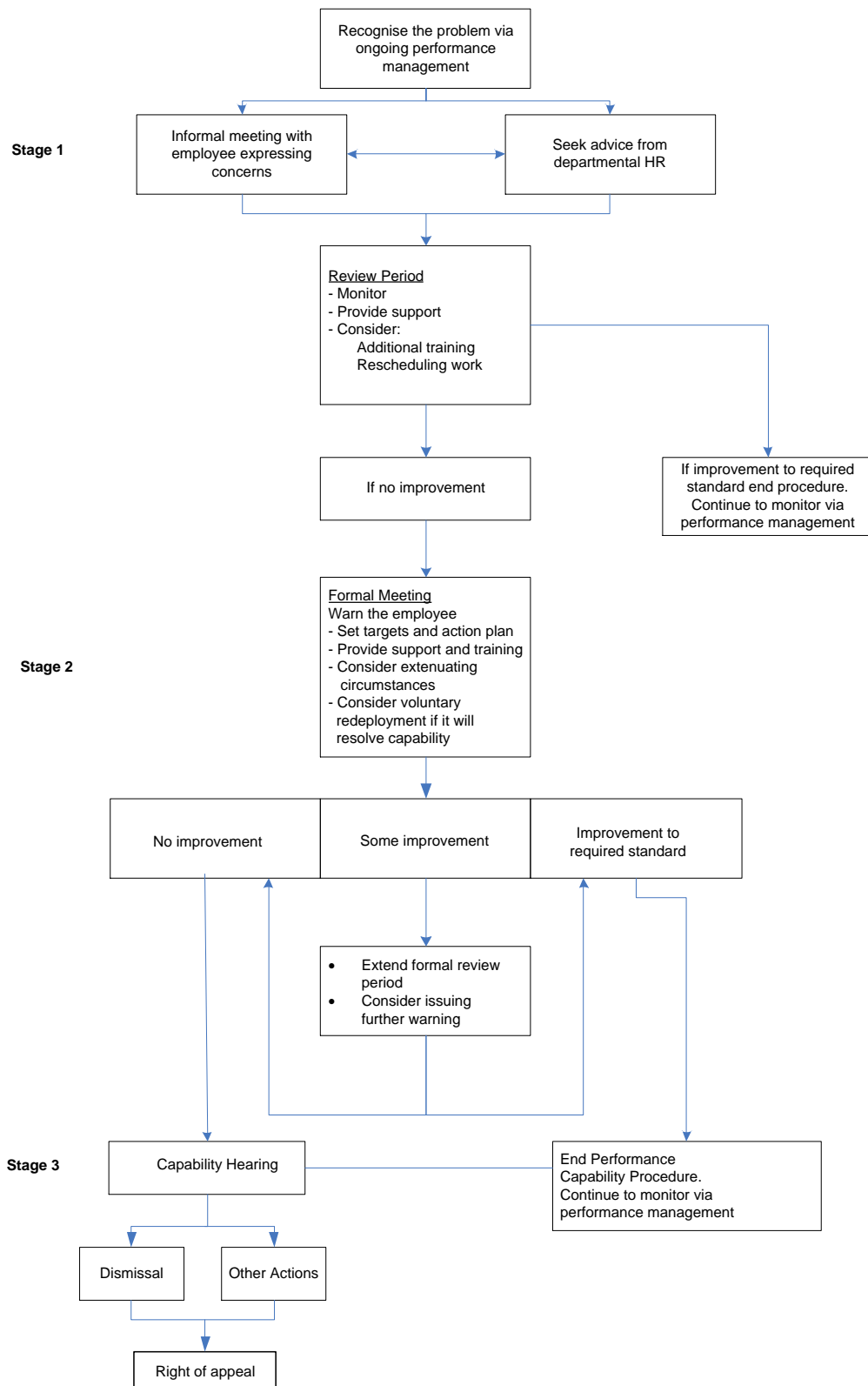
Version History			

Links and Dependencies	

**Derbyshire County Council****Guidance on the Performance Capability Procedure**

	<b>Page No.</b>
Flowchart	4
1 Introduction	5
2 Review	5
3 What Is Performance Capability?	5
4 Your Role	5
5 Performance Capability Procedure - Stages	7
5.1 - Timescales	7
5.2 - Meeting and Record-Keeping Protocols	7
5.3 - Stage 1 – Informal Meeting	8
5.4 - Review Period	9
5.5 - Stage 2 – Formal Meeting	9
5.6 - Review Period	10
5.7 - Stage 3 – Capability Hearing	11
6 Appeal	12
Appendix 1 – Capability Hearing Procedure	14
Appendix 2 – Performance Matrix	16

### Performance Capability Procedure



## **1. Introduction**

This guidance should be read in conjunction with the Performance Capability Procedure, which should be used to deal with performance issues regardless of the length of time the employee has worked for the Council. Performance issues may initially become apparent during induction or ongoing performance management.

You will be expected to play a key role in ensuring that capability issues are dealt with promptly, fairly and consistently.

## **2. Review**

The Council's Performance Capability Procedure and guidance documents have been reviewed in the light of and are consistent with the ACAS guidance, current legal precedents and local operational experience. The documents will be updated in line with changing advice and guidance on the intranet or the website should be referred to for the most up to date version.

## **3. What is Performance Capability?**

It is a procedure to manage under-performance where an employee fails to achieve agreed performance standards or objectives. It should not be used to deal with misconduct, where the Disciplinary Procedure should be used.

## **4. Your Role**

As a manager you should take positive measures to ensure that, as far as possible, employees' capability issues are minimised through:

- Effective recruitment and selection.
- Induction of new employees, providing support and development.
- The monitoring of an employees' performance as part of the performance management (My Plan) process or existing IDR/PDR/Supervision processes.
- Providing support to your employees.

If you become concerned about an employee's performance, consider:

- Are there indications that the employee is unable to meet the requirements of the job?
- Have there been complaints or criticisms about the employee's standard of work from colleagues or service users?
- Are there factual grounds to indicate inadequate performance such as poor results?
- Have you identified issues during the management of the employee's performance that lead you to believe that their work performance is unsatisfactory?

The following general factors should be considered in all cases:

- Under-performance at work may be linked to factors outside the working environment.
- It is important to retain an employee in their current role to give them an opportunity to improve - **consider moving the employee to another job in the Department/council only if it is clear that this will resolve the issue of capability.** You should seek HR advice before this is discussed with the employee.
- Further training and/or support that may be required.

In addition:

- Establish regular review periods, in accordance with the Performance Management Policy and Performance Capability Procedure.
- Record and keep details of all discussions/interviews with the employee and any evidence of monitoring work or setting targets. See the template Performance Matrix (attached at Appendix 2) which can be used for this purpose.
- Issue a copy of the notes/matrix to the employee following any discussions/ meetings.
- When setting standards of performance, ensure these are consistent with the responsibilities of the job, as set out in the relevant job family role profile.
- Provide the employee with a copy of the procedure.

Although the aim of the procedure is to improve performance to an acceptable standard, dismissal is a possible outcome. To be a fair dismissal, the Council must be able to demonstrate that it has:

- Been reasonable.
- Followed fair procedures.
- Considered all relevant facts in each individual case.

- Followed good employment practice.

Also that the poor performance is causing operational difficulties or is affecting service delivery or has some other significant implications for the department or the Council.

You should seek advice from HR:

- Where a move to another role would be appropriate.
- On reasonable adjustments to be considered for disabled people or where an employee develops a disability as defined by the Equality Act 2010. These may include:
  - Making adjustments to premises.
  - Reallocating some of the disabled employee's work.
  - Altering the employee's working hours.
  - Acquiring or modifying equipment.
  - Enabling the employee to be absent for treatment or rehabilitation.

## **5. Performance Capability Procedure - Stages**

### **5.1 Timescales**

As a general guide, review periods should be at least four weeks but not longer than three months.

### **5.2 Meeting and Record-Keeping Protocols**

Prior to the meetings at stages 1, 2 and 3 you should write to the employee inviting them to the meeting giving:

- A minimum of seven days notice.
- The opportunity to be accompanied by a trade union representative or colleague.

It is important, and in both the employer and employee's interest, to keep written records during the capability process. Capability records should be maintained in the strictest confidence and kept in accordance with the **Human Resources Retention Schedule**.

Copies of meeting records should be given to the employee and provided to the HR for the employee's personal file.

A copy of letters relating to the capability process should be sent to the HR team who will maintain the register of all formal capability warnings, dismissals and actions taken detailing:

- the substance of the case,
- the outcomes of meetings and hearings,
- actions taken, the date and reasons for that action,
- whether an appeal was lodged,
- the outcome of the appeal,
- any subsequent developments.

Please ensure that the correct documentation is issued at all stages of the process as this will evidence your actions should the outcome lead to a Capability Hearing and possible dismissal. Copies should be provided to the HR for the employee's personal file.

Template letters and statement of case are available on the intranet.  
Insert link

### **5.3 Stage 1 – Informal Meeting**

If following discussions in performance management you still have concerns about under-performance, you should speak to the employee, informally and confidentially, to express your concerns about their capability and advise that this is now being dealt with under the Performance Capability Procedure.

- The employee should be given the opportunity to be accompanied by a trade union representative or a work colleague. The discussion should be constructive and the emphasis should be on finding ways to remedy the shortcomings.
- You should ensure the employee has the opportunity to inform you of any underlying causes contributing to the underperformance which you may be unaware of.
- Outline the issues that cause concern, undertake to provide support, training and work re-scheduling where appropriate and consider any extenuating circumstances that may be affecting the employee's performance.
- Agree a course of action and advise the employee that performance will be monitored over a set period of time. You should mention that if there is no improvement, then further action may be taken.



- Document the discussion – using the Performance Matrix - and provide the employee with a copy of the paperwork and provide a copy to the HR for the employee's personal file. This should include:
  - details of the under-performance including evidence of support given.
  - The improvement required.
  - Timescale for achieving the improvement.
  - A date for review between 1 and 3 months.
  - Support or training agreed to help the employee improve.
- The discussion may lead you to consider that there has been misconduct (discuss this with HR who may advise that the Disciplinary Procedure should be used) or that referral is required to Occupational Health.

#### **5.4 Review Period**

During the agreed period of review, continue to:

- Monitor performance and hold performance management meetings to discuss and provide feedback.
- Take notes of the discussions and share with the employee.
- Provide assistance/support as discussed at Stage 1.

At the end of the review period a discussion should take place with the employee.

- If issues are resolved – confirm that performance has reached an acceptable standard and the procedure is ended.
- If there has been reasonable improvement but still not to the required standard, extend the monitoring period.
- If there has been no improvement - advise the employee that there are still performance issues and that he/she will be invited to a Stage 2 review.

After the discussion confirm the outcomes with the employee in writing and provide a copy to the HR for the employee's personal file.

## **5.5 Stage 2 – Formal Meeting**

The employee should be invited to a formal meeting to discuss the shortfall in performance.

At the discussion, you should:

- Review the monitoring period and discuss the shortfall in performance. It is essential that evidence is provided of the lack of progress.
- Provide evidence of the support offered to date.
- Agree targets for achieving improvement.
- Discuss what further training and support can be provided.
- Consider any extenuating circumstances that may be affecting the employee's performance.
- Ensure that reasonable adjustments have been made for an employee with a disability.
- Warn the employee that the level of performance is not of an acceptable standard and that failure to improve could lead to dismissal.
- Explain the timing of and what will happen during the next review period.

You should confirm the formal warning and the action plan in writing to the employee after the meeting and provide a copy to the HR for the employee's personal file.

## **5.6 Review Period**

During the agreed review period, you should:

- Continue to closely monitor the employee's progress towards achieving expected standards.
- Give regular feedback to the employee, through a minimum of monthly performance management meetings during the review period.
- Provide support and encouragement.
- Take notes of the performance management meetings, share with the employee and provide copies to the HR for the employee's personal file.

At the end of the review period a discussion should take place with the employee -:

- If there is no improvement then a Capability Hearing should be arranged.
- Some progress made by the employee may lead you to consider extending the formal review period. When extending the formal review period, consideration should be given to issuing a further warning.
- Where problems are resolved, advise the employee that the procedure is now ended.

After the discussion confirm the outcomes with the employee in writing and provide a copy to the HR for the employee's personal file.

Should the employee's work performance improve and no further action is taken but subsequently the employee's work performance again causes concern, then it is possible to continue with the procedure at the stage at which action ceased as long as this is within a reasonable time period, usually 12 months.

### **5.7 Stage 3 – Capability Hearing**

When all the stages of the procedure have been followed and it is clear that there has not been improvement to the required standard, then a Capability Hearing should be arranged.

The Capability Hearing will be chaired by a manager from the employing department and from the Head of Service who has had no previous involvement in the case. He/she will be supported by HR.

The Hearing Officer must make arrangements for notes of the hearing to be taken.

The employee should be notified in writing of the following, giving a minimum of 7 calendar days' notice (template letter on Intranet):

- A formal hearing is being held and the requirement to attend.
- Purpose of the hearing and details of the capability issue.
- Location, date, time of hearing.
- Name of officer conducting the hearing.
- That an outcome could be dismissal on the grounds of performance capability.
- The right of accompaniment by his/her nominated representative.
- The right of appeal against any action taken.

A statement of case should be prepared and two copies must be provided to the employee prior to the hearing date, allowing enough time for the employee to discuss matters with their nominated representative.

Options for delivering the letter are:

- Handed to the employee.
- Delivered by hand to home address.
- Sent to home address by recorded delivery.

Copies of all relevant documents should be enclosed.

At the hearing the Presenting Officer will need to detail the actions taken to improve the employee's work performance, including support and assistance given and targets set and not met. Witnesses may be called as appropriate. The employee will also have opportunity to submit a statement or make a verbal presentation in support of his/her case. The hearing procedure is set out in Appendix 1.

The outcomes of the hearing may be:

- Dismissal with notice.
- Redeployment to another role at the same level that better meets the skills and experience of the employee.
- Redeployment into a job which incurs a reduction in grade. This will not attract pay protection or guaranteed priority interview status.
- Final written warning with a further review period.

The decision may also be taken that none of the above actions are appropriate and the employee should have a further review period.

Where there is a further review period, a further hearing will need to be convened to consider appropriate actions.

The outcome should be confirmed in writing to the employee and a copy provided to the HR for the employee's personal file.

The employee will have the right of appeal against the outcome.

## **6 Appeal**

An employee may appeal within 7 calendar days of receiving written notification of the Capability Hearing decision.

- An appeal against dismissal is to Strategic Directors and this must be registered in a letter to the Director of Legal Services within 7 calendar days of receipt of the written notification of the hearing decision.
- An appeal against any other outcome must be registered in a letter to the appellant's Strategic Director within the same timescales.
- Appeals will be heard by a Strategic Director or a member of their Senior Management Team, normally from a different Department to that in which the original hearing was heard.

The employee will receive a reply to the appeal letter within 7 calendar days, acknowledging the registering of the appeal. The appeal will take place as soon as practicable. There will be a minimum of 7 calendar days' notice of the appeal date.

An appeal against an outcome other than dismissal will be heard by a member of the Head of Service.

Any statements of case or evidence on which either management or the employee wishes to rely, will be provided to the Appeal Hearing Officer and other party at least 7 calendar days prior to the hearing.

The Presenting Officer will call witnesses where appropriate. Legal and HR advisers may attend the appeal. The employee will be entitled to be accompanied at the appeal by a colleague or trade union representative and will also be able to call witnesses.

The appeal may be upheld in the employee's favour, the original decision confirmed or different sanctions applied. The employee, nominated representative and the Presenting Officer should be informed in writing of the decision within 7 calendar days. The decision will be final.

**The Capability Hearing – Procedure**

The Capability Hearing is chaired by the Hearing Officer and proceeds as follows:-

- i) The Presenting Officer puts the case in the presence of the employee and may call witnesses.
- ii) The employee (or representative) has the opportunity to ask questions of the Presenting Officer regarding the evidence given by him/her and any witnesses whom he/she may call.
- iii) The Hearing Officer has the opportunity to ask questions of the Presenting Officer and witnesses.
- iv) The employee (or representative) puts his/her case in the presence of the Presenting Officer and calls such witnesses as he/she wishes.
- v) The Presenting Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vi) The Hearing Officer has the opportunity to ask questions of the employee and his/her witnesses.
- vii) The Presenting Officer and the employee has the opportunity to sum up their case if they so wish, with the Presenting Officer's submission being received first.
- viii) The Presenting Officer and the employee withdraw.
- ix) Any advisors to the Hearing Officer should remain in the room while a decision is made.
- x) The Hearing Officer deliberates, only recalling the Presenting Officer and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to

return even if only one may be concerned with the point giving rise to doubt.

- xi) After careful consideration of all the information, the Hearing Officer recalls both parties and states the action deemed appropriate. If this is not possible due to the need to review the details of the case, the Hearing Officer may defer the decision.

## Performance Capability Matrix

Date  
Version

Issue	Current Standard	Expected Standard	Measured by	Planned Action	Responsibility	Time Scale
Issue 1 e.g. moving and handling techniques.	Not assessing the situation correctly before commencing with moving and handling.	Assess the situation using the correct moving & handling techniques, following the risk assessments and information on the service user's file.	Feedback from service users, staff and managers.	Refresher moving and handling training to be completed.	AB has arranged refresher moving and handling training.	In-house refresher moving & handling training on (date).
	Not communicating properly with service users whilst assisting with moving and handling.	Communicate with the service user whilst completing any moving and handling.	Observation from mentor and management.	Observation by manager with constructive feedback.	CD has responsibility for taking an active part in all aspects of this training and putting it into practice in the workplace.	All other issues must be demonstrated on an ongoing basis and must be satisfied by the review date of x.
		Any changes to be documented in the personal log.	Quality / detail of input into logs.	Mentoring will be available for CD to allow her the opportunity to discuss and put into practice good work practice with colleagues.	CD has responsibility to ensure logs are updated.	
		Complies with DCC procedures.				
Issue 2 e.g. Poor time keeping	CD is frequently late for shifts and provides no explanation.	CD to be on time for each shift. If lateness is unavoidable, time must be made up at the end of shifts or at other times.	Signing in book, manager observation.	CD to note shift requirements and comply. If changes are required these are to be negotiated in advance.	CD to ensure her other commitments can be accommodated outside shift times.	By next review period.
Issue 3 etc.						

Manager name. .... Employee name.....  
 Signature.....Date..... Signature.....Date.....



### Performance Matrix Guidelines

The performance matrix is to be used to help employees who are not performing satisfactorily to improve.

#### ***It should list clearly:***

1. What they are doing wrong.
2. What you expect from them.
3. How the gap between these two standards is going to be met.

A completed matrix should allow you to show that you have followed correct procedures if the case proceeds to a capability hearing.

#### ***You should:***

1. Clearly detail issues and expectations.
2. Monitor and record performance and keep employee informed of the situation. Keep a separate log detailing all your findings. This document is primarily for the employee.
3. Ensure timescales don't drift – if they do, it implies that poor performance doesn't matter.

### ***Completion of Matrix***

- From stage 1 on the matrix, you will probably need several different versions which show the progress the employee makes.
- Keep a record of each version for evidence purposes. This will show how you have kept track of the situation, taking off items where performance has improved and perhaps adding new issues as they arise.
- Use as many rows as there are problematical areas of the employee's performance.

### ***Meeting with Employee***

- Before the first meeting, fill in the first three columns.
- Work on filling in the other columns at the meeting with the employee. This helps them to make contributions and feel some ownership of the process, making it more likely to succeed.
- The employee can then leave the meeting with a helpful document reminding them of what is required, so they shouldn't forget what is needed. Alternatively you can take time to write up the matrix and give it to the employee shortly afterwards.