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Lewes District Council



Working in partnership with **Eastbourne Homes**

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Contents

1. Introduction.....	1
2. Equality and Diversity	1
3. Summary of the Capability Procedure	2
4. Performance improvement plan	3
5. Stage 1	4
6. Stage 2 – Capability Meeting.....	6
7. Capability Hearing	8
8. Appeal	9
9. Related Policies and Procedures	11

1. Introduction

- 1.1. It is the aim of this policy that all staff are enabled to work and perform to the best of their ability to meet the needs of the councils. The effective management of performance of staff needs to be an integrated and ongoing part of day to day activity so that all members of staff meet their requirement to achieve or surpass an acceptable level of performance. All members of staff need to be clear about the standards expected in their roles, to be set challenging yet realistic objectives and to receive appropriate feedback, development and training.
- 1.2. It is recognised that from time to time an individual's performance/capability may fall below the standards expected of a role. It is, therefore, important that the council has a procedure in place which sets out how it will consider and deal with unsatisfactory performance due to lack of capability so that staff are given appropriate support to help them improve their performance. The council expects this to be carried out fairly and consistently across the organisation.
- 1.3. This procedure is to be followed where an employee consistently fails to reach or maintain the required standards of job performance through a lack of knowledge, skill or ability. It should also be used to provide structured support and encouragement.
- 1.4. In exceptional cases where a single significant performance error has serious consequences (i.e. serious health and safety issue) the principles/procedure for serious misconduct as outlined in the Disciplinary Procedure should be followed, which will include a full investigation.
- 1.5. This procedure is not contractual and the council reserves the right to enter the process at any stage and amend the procedure where relevant to individual circumstances

2. Equality and Diversity

- 2.1. Where a staff member requires reasonable adjustments to attend and/or participate in a formal capability meeting, they may be accompanied by an appropriate person to provide support, in addition to their right to be accompanied by a colleague or trade union official.
- 2.2. The manager responsible for the meetings at each stage will ensure reasonable adjustments and special arrangements are made where possible. This includes ensuring information is in an accessible format, that meeting arrangements/venues are accessible to all parties and that

reasonable adjustments are made to enable fair and complete participation by all parties.

- 2.3. Staff members are invited to advise their line manager and subsequent managers of their needs and requirements to ensure they are fulfilled throughout the process wherever possible. This right is also extended to the appeal hearing.

3. Summary of the Capability Procedure

- 3.1. A written record of all meetings conducted under this procedure should be made.
- 3.2. Managers should hold regular 121's with employees to discuss performance, current work and any work issues. It is expected that the majority of performance related concerns will be resolved promptly at this level.
- 3.3. The manager should raise performance concerns with the employee as soon as possible. If the individual continues to perform below expectations, the manager will arrange an informal meeting with the employee. A constructive and problem solving approach will be taken with the aim of resolving matters by identifying the reasons and possible solutions.
- 3.4. Before the meeting the manager will prepare by collating any necessary information, where appropriate, to demonstrate to the employee where they are not meeting the required standards of performance, e.g. job description/person specification, competencies, supervision notes, case files, etc.
- 3.5. During the meeting the manager will discuss the shortfalls in performance, explore with the individual the possible reasons for the performance shortfall, discuss solutions to assist the employee in meeting the standards and confirm what is expected in terms of duties, outputs and targets.
- 3.6. Taking the employee's feedback into account, the manager should draw up a Performance Improvement Plan (PIP) confirming what is expected and set a realistic timeframe for improvement to be demonstrated, detailing clear, specific, measurable and realistic objectives and the support available for the employee.
- 3.7. The timescale for monitoring is to be reasonable and each case will need to be considered on its own merits. Advice should be sought from a HR Business Partner.
- 3.8. The manager will advise the staff member that the formal stages of the capability procedure will be implemented if they fail to improve sufficiently and maintain a satisfactory standard of performance

- 3.9. The line manager will schedule a follow-up meeting to review the employee's performance.
- 3.10. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health. If referral is necessary then the meeting should be adjourned whilst medical advice is sought.
- 3.11. After the meeting the manager will summarise the discussion in writing and send this to the employee along with a copy of the performance improvement plan.
- 3.12. The manager will monitor performance during the review period and if appropriate hold informal interim review meeting/s with the employee to provide feedback on progress and to encourage improved performance.
- 3.13. At the end of the monitoring period the manager will meet with the member of staff to discuss the progress and inform them of the outcome of the review period. The manager should then confirm the outcome to the employee in writing.
- 3.14. If the employee's performance improves, the manager will give the individual positive feedback and remind them of the need to sustain the improved level of performance.
- 3.15. Should significant improvements be evident, but the employee has not yet achieved the required standards of performance, the manager may choose to extend the length of the review period.
- 3.16. Where informal action does not achieve satisfactory results or if informal action is not appropriate, the formal procedure will be implemented.

4. Performance improvement plan

- 4.1. A performance improvement plan (PIP) is a series of measures designed to help improve the employee's performance.
- 4.2. Each measure will ideally be agreed with the employee, although the council reserves the right to insist on any aspect of the performance improvement plan in the absence of such agreement.
- 4.3. Each plan will be tailored to the particular situation, but will contain the following elements:
 - Timescale. The overall timescale in which the necessary improvement must be achieved.
 - Targets. The PIP will specify the particular areas in which improved performance is needed and set out how and on what criteria the performance will be assessed.

- Measures. The PIP will specify what measures will be taken by the council to support the staff member. Such measures may include: training; additional supervision; the reallocation of other duties; or the provision of additional support from colleagues.
- Feedback. The employee will be given regular feedback from their line manager indicating the extent to which the staff member is on track to deliver the improvements set out in the PIP.

5. Stage 1

- 5.1. Where an informal approach does not lead to a satisfactory improvement in the employee's performance, the staff member will be invited to a performance review meeting.
- 5.2. The purpose of the meeting will be to discuss the staff members performance and decide what measures should be taken with the aim of securing the required improvements.
- 5.3. The meeting will normally be conducted by the employee's manager and a member of HR.
- 5.4. The staff member may be accompanied to the meeting by either a work colleague or a union representative.
- 5.5. The employee will be given an opportunity to respond to any criticisms of their performance and to put forward any explanations they may have.
- 5.6. During the meeting, depending on the circumstances, the manager will:
 - Review the monitoring period and the support put in place.
 - Give the employee the opportunity to challenge and/or put forward any facts and evidence for consideration
 - Consider any extenuating circumstances which may be affecting the employee's performance
 - Agree with the employee how the performance issue can be addressed including any learning, development or support and the timescale involved.
 - If appropriate, establish a further monitoring period and confirm the arrangements for review
 - Consider redeployment – when appropriate and where the employee wishes this to be considered

- 5.7. If the decision can be made at the end of the meeting it will be communicated to the employee. However, if more time is required the decision will be communicated within 5 working days of the meeting.
- 5.8. The manager will confirm one of the following outcomes:
- No further action is appropriate at this time;
 - The employee will continue to be managed under the informal stage of the policy.
 - The employee will be managed under Stage 1 of the capability procedure and a First Improvement Note will be issued for failure to achieve and maintain the required standards of performance.
- 5.9. The improvement note will remain live for a twelve month period.
- 5.10. A Performance Improvement Plan will be updated or initiated and a period of review will be set. During the monitoring period, interim review meetings will be held and a formal review will be arranged
- 5.11. It must be made clear that a failure to achieve and maintain satisfactory performance by the end of the review period may result in progression to Stage 2 of the Capability Procedure and could lead to dismissal.
- 5.12. The manager will confirm the employee's right to appeal and that the appeal should be addressed to the relevant senior manager in writing, clearly stating the reasons for appeal, within 10 working days of the written confirmation of the decision.
- 5.13. At the end of the review period the manager will hold a formal review meeting and discuss the employee's progress since the improvement plan was set.
- 5.14. If the required improvement has been made, this will be confirmed. The manager will also confirm that the improved level of performance needs to be sustained and any subsequent lapse may lead to action under the Capability Procedure being resumed. The record up to this point will be regarded as spent after 12 months have elapsed from the issue of the First Improvement Note.
- 5.15. If some improvement has been made, but the standards have not yet been met, the manager may extend the review period. A final review meeting will be held at the end of the extended period to review progress.
- 5.16. If the conclusion of the Stage 1 review period is that the employee's performance has not sufficiently improved, the manager will confirm that it is necessary to move to Stage 2 of the Capability Procedure.

6. Stage 2 – Capability Meeting

- 6.1. If the problem is more serious, or if there has been a failure to meet the performance targets set at Stage 1, a Stage 2 formal meeting will be held.
- 6.2. The manager will give at least two full working days' notice of the meeting and the employee will have the opportunity to be accompanied by a union representative or work colleague.
- 6.3. The letter inviting the employee to the meeting will set out the issues to be considered and will include:
 - a copy of the monitoring/progress to date:
 - copy of all correspondence from the informal stage and stage 1 capability meeting
 - Performance Improvement Plan
 - notes of review meetings
 - advice from Occupational Health if applicable.
- 6.4. The meeting will be conducted by the manager, who will be accompanied by a member of the HR team.
- 6.5. During the meeting the manager will cover:
 - the outcomes of the Stage 1 monitoring process
 - the performance issues continuing to cause concern, giving specific examples of where performance remains or has fallen below the required standard
 - invite the employee to put forward their explanation for the lack of capability, listen carefully to any representations made and consider the points raised by the employee
 - the improvement/s required in performance
 - details of support already provided
 - the timescale during which performance will continue to be monitored
 - details of how progress will continue to be assessed
 - any support/guidance to be provided
 - arrangements for regular review discussions during the monitoring period
 - redeployment – when appropriate and where the employee wishes this to be considered
- 6.6. If the decision can be made at the end of the meeting it will be communicated to the employee. However, if more time is required the decision will be communicated within 5 working days of the meeting.
- 6.7. The manager will confirm one of the following outcomes:

- The employee has now reached, or is shortly expected to reach, the specified levels of performance, and that no further formal action is necessary. However, the First Improvement Note will remain 'live' for 12 months from the date of issue and therefore if satisfactory improvement proves only to be of a temporary nature then the manager has the option of returning immediately to this point in the procedure.
 - The employee has made substantial improvements, but their performance is still below acceptable standards. A further review period will therefore be required
 - The employee has made little or no improvement in meeting the required standards of performance. They will be managed under Stage 2 of the capability procedure and a Final Improvement Note will be issued for failure to achieve and maintain the required standards of performance. The Final Improvement Note will remain live for a twelve month period.
 - If the outcome is that the employee will be managed under Stage 2, the employee will be formally reviewed in 4 to 12 weeks, depending on the action plan. The manager will confirm the employee's right to appeal.
- 6.8. Within five working days of the meeting the manager will write a letter which confirms the Stage 2 Final Improvement Note and set out the continued concerns, the expected improvement, the timescale for achieving it and any further support that may be given..
- 6.9. The letter will set out the right of appeal and that the appeal should be addressed to the relevant senior manager in writing, clearly stating the reasons for appeal, within 10 working days of the written confirmation that the employee is being placed on Stage 2 of the Capability Procedure and issued a Final Improvement Note. It will confirm that if the employee fails to improve and sustain satisfactory performance it may be necessary to move to a Capability Hearing and that a failure to achieve and maintain satisfactory performance could ultimately lead to dismissal.
- 6.10. The manager will update the Performance Improvement Plan and include the timescale for review. The review period should normally be set for no longer than twelve weeks and may include interim review points.
- 6.11. At the final review meeting, the line manager will discuss the employee's overall progress since the performance improvement plan was set and the outcome of the review period.
- 6.12. If at the end of the review period the required improvement has been made, this will be confirmed to the employee. The manager will also confirm that the improved level of performance must be maintained and any subsequent lapse in performance during this timescale may lead to action under the Capability Procedure being resumed.

- 6.13. By exception, if some improvement has been made but the standard(s) have not yet been met, the manager may elect to extend the review period for a maximum period of 4 working weeks. The employee should be reminded of the potential consequences of failure to achieve a significant and sustained improvement.
- 6.14. If the conclusion of the Stage 2 review period is that the employee's performance has not sufficiently improved and there is still evidence of incapability, the manager will advise the employee that they will be invited to a Capability Hearing. The employee will be warned that a possible outcome of the meeting could be to dismiss on the grounds of capability.

7. Capability Hearing

- 7.1. Before the meeting the manager will prepare a detailed report, identifying the continuing under performance against the time frames, and outlining the learning, development and support put in place against the performance improvement plan.
- 7.2. The report will be sent to the employee, with an invitation to a meeting to discuss the performance concerns. They will be given at least 10 working days' notice of the meeting and the opportunity to be accompanied by either a union representative or work colleague.
- 7.3. Where possible a Capability Hearing will be conducted by a manager more senior to the manager presenting the case. They will be referred to as the Deciding Officer.
- 7.4. A HR Business Partner will attend.
- 7.5. The employee's manager will be required to demonstrate what action, support, training and discussions have taken place throughout the informal and formal stages of the procedure.
- 7.6. The employee will be required to give an explanation as to why they have not met the required standards of performance.
- 7.7. The Deciding Officer will consider the employee's performance history, all related evidence and any relevant policies, procedures and practices. They will make the final decision on the outcome and will consider both the manager and the employee's viewpoints, will review the employee's performance record and will decide appropriate action, which may include dismissal.
- 7.8. The manager will present their case and then the employee will be given the chance to respond by presenting their case.

- 7.9. The Deciding Officer will listen to both viewpoints and will ask questions of the manager and the employee.
- 7.10. In an adjournment after both cases have been heard: The Deciding Officer will make a decision based on the evidence provided and tell both the manager and the employee of their decision.
- 7.11. The outcome will either be:
- Dismissal with paid notice on the grounds of capability
 - Extension of the previous monitoring period and a final improvement note
- 7.12. Should the employee not have made satisfactory progress at the end of an extended monitoring period, the Capability Hearing will be reconvened with the same Deciding Officer following the same procedure.
- 7.13. The Final Improvement Note remains live for 12 months from issue and if improvement remains temporary the manager has the option of returning to a further Capability Hearing and dismissal may be a consideration.
- 7.14. The outcome of the Capability Hearing should be confirmed to the employee in writing within 5 days of the hearing. Where an employee is dismissed on the grounds of capability the letter should include their right of appeal.

8. Appeal

- 8.1. An appeal against an Improvement Note will be heard where possible by a manager more senior than the Deciding Officer at the Capability Hearing. Where the Capability process has been handled by a member of the Corporate Management Team, the appeal will be heard and determined by another member of the Corporate Management Team.
- 8.2. Where possible within 10 working days of receipt of an appeal, the officer hearing the appeal shall hold a meeting with the employee. The employee may be accompanied by a trade union representative or nominated colleague.
- 8.3. Where possible, the Manager hearing the appeal will give his or her decision at the conclusion of the meeting following an adjournment to consider the decision. He or she may uphold or reject the appeal.
- 8.4. The decision will be confirmed in writing within 5 working days of the meeting. There is no further right of appeal against an Improvement Note.

- 8.5. If the appeal is upheld an improvement note will be disregarded for capability purposes.

Appeals against dismissal on the grounds of capability

- 8.6. An employee who is dismissed has the right of appeal against the decision. The appeal is to be made in writing, setting out the grounds for appeal and submitted to the relevant manager within five working days of the employee receiving the letter confirming the ending of employment.
- 8.7. The Assistant Director of HR and Transformation or Head of HR shall invite two elected members of the councils joint staff committee to be part of the Appeal panel, the third member will be a manager more senior than the Deciding Officer at the Capability hearing where possible and who has not been involved previously in the Capability procedure.
- 8.8. If the dismissal has been issued by a member of Corporate Management Team, the third member of the appeal panel will be another member of Corporate Management Team.
- 8.9. Within 10 working days of receipt of an appeal, the manager hearing the appeal shall arrange an appeal hearing with the employee. The panel will also hear from the Deciding Officer at the Capability hearing who made the original decision.
- 8.10. Employees can be accompanied by a colleague or trade union representative at the hearing and will be asked to confirm, no later than 5 working days before the hearing, if they intend to call any witnesses. Representatives may address the hearing to put forward and conclude the case, they do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish them to or prevent the managers from explaining their case.
- 8.11. Both the staff side and the management side (normally the Deciding Officer from the Capability Hearing) may submit new evidence at the appeal panel; this should be provided at least 5 working days before the date of the appeal hearing.
- 8.12. Each appeal hearing may differ depending on the individual circumstances but normally the procedure will be:
- The parties and their representatives are introduced to the panel
 - The panel introduce themselves
 - Employee or representative explains why they are appealing
 - Employee or representative presents the case calling any witnesses
 - Management question employee, representative and any witnesses
 - Panel question employee, representative and any witnesses
 - Management present their case calling any witnesses

- Employee or representative question management and any witnesses
- Panel question management and any witnesses
- Management sum up, at this stage no new material can be introduced or points made to which reference has not already been made during the proceedings
- Employee, or representative, sum up. At this stage no new material can be introduced or points made to which reference has not already been made.
- Both parties leave the room while the panel considers the information presented.
- The panel may recall both parties to ask further questions of either, after which the parties will retire again
- The panel recalls the parties and advise if they have been able to make a decision and, if so, what that decision is. If it has not been possible to make a decision the panel will explain why and confirm next steps – whether the hearing is to be reconvened or decision will follow in writing after further deliberation.

8.13. The panel will either uphold or reject the appeal; they can do so either in whole or in part. It is for them to decide if the dismissal is upheld, or if it is to be changed, which can include withdrawing the notice of dismissal and reinstating the employee.

8.14. Where possible, a decision will be made at the conclusion of the meeting following an adjournment to consider the decision; this will be confirmed normally within 5 working days. Where further time is necessary to consider the appeal and/or make a decision this will be communicated in writing within 5 working days.

8.15. If an appeal regarding a dismissal is upheld the employee will be reinstated in his or her employment on the original terms and conditions and the employee will receive any salary that would have been paid from the date of dismissal to the reinstatement date. In addition, an improvement note or action short of dismissal and an additional sanction may be issued.

8.16. The decision of the appeals panel is final and there is no further right of appeal.

9. Related Policies and Procedures

- 9.1. Code of Conduct
- 9.2. Disciplinary Procedure
- 9.3. Attendance Management

