

CAPABILITY PROCEDURE

1.0 Introduction

- 1.1 Eastbourne Borough Council (EBC) is committed to ensuring all employees have the right skills, knowledge, and ability to do their job effectively. Employees who do not perform to the standard required will have an impact on the service we provide.
- 1.2 The procedure ensures that EBC has fair and effective arrangements for dealing with work performance and capability matters. It provides a framework for managers to work with employees to improve performance. The objective will always be to set out a constructive approach to achieving improved work performance through effective supervision, coaching, support, training, and performance review. In most cases this will be achieved without needing to use the formal stages of the procedure.
- 1.3 Before employees can be expected to reach appropriate standards of job performance, the Council accepts they should be provided with appropriate training, guidance and support.
- 1.4 An employee's performance can vary from time to time. Poor performance of a sporadic or minor nature can normally be resolved by giving informal advice and support.
- 1.5 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 where weaknesses have been identified by an appraisal process.
- The Disciplinary Procedure will be used where the failure to perform to the standards required is a matter of misconduct.
- 1.6 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.
- 1.7 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.

Version Control

Version Number	Date	Review Date	Author	Reason for New Version
2	May 2014	May 2016	Human Resources	Simplification Legal Compliance

- 1.8 Whilst the Council will support employees who are underperforming, it is the employee's responsibility to take whatever action is necessary, including seeking guidance, to improve their performance.
- 2.0 **Principles**
- 2.1 Individuals are expected to be capable of carrying out the work they are engaged to do at the required standard.
- 2.2 Where employees are performing below expectations, the role of the line manager will be to bring this to the attention of the individual and to support them to improve performance to an acceptable level. Managers will make every reasonable effort to informally address issues of under performance before using the formal procedure. The period of time and level of support will be balanced against the needs of the organisation.
- 2.3 The Council is committed to ensuring that there is no unlawful discrimination and bias in the application of its procedures. Action taken under this procedure will therefore be monitored to ensure fairness.
- 2.4 To ensure fair treatment and, where appropriate, provision of support by Eastbourne Borough Council in the application of this procedure, employees should be invited to provide information about any equality or diversity issues which may be relevant.
- 2.5 The reasons for poor performance should be explored fully to determine the most appropriate solution. Concerns about an individual's performance may arise from a number of factors. The first step will be to investigate the underlying cause through discussion with the employee. The solution will depend upon the cause identified.
- 2.6 Management of the employee's performance may include consideration of the following support or interventions:
- Additional support, clarification or supervision/coaching from the line manager
 - Retraining or additional training
 - A temporary or permanent change of hours or duties
 - Where performance difficulties have been linked to the working environment, temporary placement in another section or division
 - Allocating a colleague to act as a 'buddy' and role model on areas of shortfall
 - Counselling support
 - Referral to Occupational Health to seek medical advice
- 2.7 Employees will be notified in advance of any formal capability meeting and have the opportunity to be accompanied by a trade union representative or colleague from EBC.
- 2.8 If the potential consequences of the capability issue are serious then EBC reserves the right to move straight to the formal steps set out.
- 2.9 Although normal capability and performance standards apply to an employee

who is an accredited official of a recognised trade union, reasonable steps will be taken to discuss the circumstances of the case with the UNISON Branch Secretary or the Regional Officer of the Union as appropriate prior to any formal capability management action being applied.

- 2.10 As each case will be different it is not appropriate to set fixed timescales for each stage of the procedure. As a general guide, performance monitoring review periods should be between 4 and 12 weeks. However, it may be that a shorter or longer monitoring period is required and advice should be sought from your HR Adviser.
- 2.11 A record of discussions and agreed actions, in the form of a Performance Improvement Plan, will be retained and a copy will be provided to the employee at all stages of the procedure.
- 2.12 At the formal procedure stages managers will be supported by a member of the Human Resources team. The decision about management action will be made by the manager.
- 2.13 Records of formal action will be disregarded for future capability purposes after 12 months.
- 2.14 Employees will have a right of appeal against the issuing of an improvement notice under each formal stage of the capability procedure and also against any decision to dismiss for reason of capability.
- 2.15 Whilst every effort will be made to enable an employee to improve their performance and retain them in post, the Council cannot continue to maintain employment if the required standards of performance are not achieved following the exhaustion of the Capability Procedure.
- 2.16 Managers, in conjunction with a member of the HR team, should consider whether an employee may be considered to have a disability under the disability provisions of the Equality Act, and if so whether 'reasonable adjustments' might permit retention in the job, or in another role. Managers should also explore with employees whether any adjustments could be made to improve performance.

In cases where the root of the problem appears to be related to a potential disability or ill health, advice should be obtained from Occupational Health.

- 2.17 Good practice requires that redeployment be properly considered prior to any decision to dismiss an employee for reasons of poor performance. Redeployment may be discussed and considered at any stage in the process. Details of any/all such discussions must be included in the manager's written record. It is recommended that the manager seek advice from the HR Adviser prior to any discussion about redeployment.

If a suitable post is available and redeployment agreed as viable, the employee will have a trial period in the new post. The length of the trial period will depend upon the role. This period will allow the employee to decide whether the new job is suitable and the manager to assess the employee's

performance in the new role.

There is no pay protection for employees who request and who are redeployed to a lower-graded post.

3.0 Summary of capability procedure

3.1 The Capability procedure contains the following stages;

- Informal Approach – Meeting with employee
- Stage 1 – Formal Capability Meeting and possible issue of First Improvement Note
- Stage 2 – Formal Capability Meeting and possible issue of Final Improvement Note
- Stage 3 - Capability Case Hearing (potential of dismissal or in exceptional circumstances - alternatives to dismissal)

3.2

Stage	Action	Responsibility	Appeal
Informal approach	Meeting with employee	Immediate Team Leader/Manager	No right of appeal
Stage 1	Capability Meeting and issue of first improvement note	Immediate Team Leader/Manager Supported by HRA	Next level of Manager Where first improvement note issued
Stage 2	Capability Meeting and issue of final improvement note	Immediate Team Leader/Manager Supported by HR Adviser	Next level of Manager Where first improvement note issued
Stage 3 Capability Case Hearing	Dismissal with notice	Senior Head of Service Supported by HR Adviser	Formal Appeal Panel

4.0 The procedure to follow
Informal action

4.1 Managers should meet regularly with employees to discuss performance, current work and any work issues. Initial identification of performance concerns often arises through these normal one to one supervision meetings. It is expected that the majority of performance related concerns will be resolved promptly at this level.

- 4.2 The manager should raise performance concerns with the employee as soon as possible if the individual continues to perform below expectations following normal supervision discussions.

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.

- 4.3 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.

- 4.4 During the meeting the manager will:

- discuss the shortfalls in performance
- explore with the individual the possible reasons for the performance short-fall
- discuss solutions to assist the employee in meeting the standards
- confirm what is expected in terms of duties, outputs and targets
- taking the employee's feedback into account, draw up a Performance Improvement Plan confirming what is expected and set a realistic timeframe for improvement to be demonstrated. Detail clear, specific, measurable and realistic objectives and the support available for the employee. 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 the HR Adviser if required.
- confirm to the employee that the formal stages of the capability procedure will be implemented if the employee fails to improve sufficiently and maintain a satisfactory standard of performance
- schedule a follow-up meeting to review the employee's performance. Consider whether an interim review point is also required.

- 4.5 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.

- 4.6 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
- 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
- ensure that any necessary learning, development, help, support and guidance are in place to enable the employee to meet the standards.

- 4.7 **Performance Improvement Plan**

A Performance Improvement Plan aims to enable the individual to achieve the required standard of performance. The plan will include clear, measurable and realistic objectives.

Performance progress will be reviewed periodically. Specific actions will be detailed and may include training and development activities, advice, guidance, or support activities.

When issuing an Improvement Plan the manager will ensure the length of the plan is reasonable by taking into account all of the relevant circumstances including: the level of poor performance; the performance issues in question and improvement required; and the nature of the role.

4.8 **Outcomes of the informal action**

At the end of the monitoring period the manager will meet with the employee 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.

4.9 If the employee's performance improves the manager will give the individual positive feedback and remind of the need to sustain the improved level of performance.

4.10 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.

4.11 Where informal action does not achieve satisfactory results or if informal action is not appropriate, the formal procedure will be implemented.

5.0 **Formal Procedure**

Stage 1 - Capability Meeting

5.1 Before the meeting:

The manager will write to the employee, notifying of the concerns over their performance and inviting them to a meeting to discuss the matter. Included with the letter will be a copy of the procedure, and where informal monitoring has taken place, a copy of the Performance Improvement Plan and notes of review meetings.

The manager will give at least two full working days' notice of the meeting and the opportunity to be accompanied by a union representative or colleague from EBC with them.

5.2 The meeting will be conducted by the employee's manager, who will be accompanied by a member of the HR team.

The manager will explain the way in which the required standard has not been met, using examples to support concerns. Through discussion with the individual, the manager will seek to identify the reasons for the unsatisfactory performance.

During the meeting, depending on the circumstances, the manager will:

- Review the monitoring period and the support put in place, if an informal approach was initially taken
- 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

5.3 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 3 working days of the meeting. 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.

5.4 If the outcome is that the employee will be managed under Stage 1 of the capability procedure and issued a First Improvement Note:

- The improvement note will remain live for a twelve month period.
- A Performance Improvement Plan will be updated or initiated.
- A period of review will be set. During the monitoring period, interim review meetings will be held and a formal review will be arranged, normally in 4 to 12 weeks, depending on the performance improvement plan.
- 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.
- 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.

5.5 Within three working days of the meeting the manager will write a letter confirming the outcome, setting out the areas in which the employee has not met the required performance standards and the improvement that is required, the timescale for achieving and the further help which will be given. It will set out the right of appeal and confirm that if the employee fails to improve and sustain satisfactory performance standards it may be necessary to move to Stage 2 of the Capability Procedure and could ultimately lead to dismissal.

The manager will update or set the Performance Improvement Plan and include the timescale for review and any interim review points.

5.6 **Stage 1 Review Period**

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.

- 5.7 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.
- 5.8 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.
- 5.9 If the conclusion of 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.

6.0 **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.

The manager will give at least two full working days' notice of the meeting and the opportunity to be accompanied by a union representative or colleague from EBC.

- 6.2 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.

The meeting will be conducted by the manager, who will be accompanied by a member of the HR team.

- 6.3 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 his or her 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

6.4 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 3 working days of the meeting. 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 his/her 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. He/she 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.

6.5 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 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.

6.6 Within three 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 the further help which will be given.

The letter will set out the right of appeal and confirm that if the employee fails to improve and sustain satisfactory performance standards it may be necessary to move to a Capability Case Hearing and that a failure to achieve and maintain satisfactory performance could ultimately lead to dismissal.

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.

6.7 **Outcome of Stage 2 Review Period**

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.

- 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.
- 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.
- 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 Case Hearing. The employee will be warned that a possible outcome of the meeting could be to dismiss on the grounds of capability.

7.0 **Capability Case 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.

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 a union representative or EBC colleague.

7.2 A Capability Case Hearing will be conducted by a Senior Head of Service or Senior Manager. An HR Adviser will attend and will contribute knowledge of procedural issues and relevant policies.

Management case

The employee's manager or senior manager will be required to demonstrate what action, support, training and discussions have taken place throughout the informal and formal stages of the procedure.

The employee

The employee or his/her representative will be required to give an explanation as to why they have not met the required standards of performance.

The decision

The Deciding Manager will consider the employee's performance history, all related evidence and any relevant EBC policies, procedures and practices. He/she 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.

- 7.3 The manager will present his/her case and then the employee will be given the chance to respond by presenting his/her case. The Deciding Manager will listen to both viewpoints and will ask questions of the manager and the employee.

In an adjournment after both cases have been heard: The Deciding Manager will make a decision based on the evidence provided and tell both the manager and the employee of their decision.

The outcome will either be:

- dismissal with paid notice on the grounds of capability

Or

- extension of the previous monitoring period.
Should the employee not have made satisfactory progress at the end of this period, the Capability Case Hearing will be reconvened with the same Deciding Manager following the same procedure

Or

- no further action required but the employee to maintain satisfactory levels of performance. 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 Case Hearing and dismissal may be a consideration.

- 7.4 The outcome of the Capability Hearing should be confirmed to the employee in writing.

Where an employee is dismissed on the grounds of capability the letter should include their right of appeal.

8.0 **Appeal Process**

- 8.1 Appeals against an Improvement Note will be heard by the next level of manager. Where the capability process has been handled by a Chief Officer, the appeal will be heard and determined by another member of the Corporate Management Team.

- 8.2 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 officer 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. The decision will be confirmed in writing within 3 working days of the meeting.

There is no further right of appeal against an Improvement Note.

- 8.4 If the appeal is upheld an Improvement Note will be disregarded for capability purposes.

8.5 **Appeal against dismissal**

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 ten days of the employee receiving the letter confirming the ending of employment.

- 8.6 A Members Appeal Panel will hear the appeal. The hearing will be arranged within 10 working days of receipt of the appeal, although timescales may be varied in agreement with the individual.

The decision of the Member Appeals Panel will be final.

9.0 **Time limits**

- 9.1 The time limits referred to in this procedure may be varied by agreement.