

Isle of Wight Council

# **CAPABILITY PROCEDURE**

# 1 Document Information

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|         |               |  |
|         |               |  |
|         |               |  |

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## 2 Contents

|     |  |    |
|-----|--|----|
| 1   | Document Information .....                                       | 2  |
| 2   | Contents .....   | 3  |
| 3   | Introduction.....  | 4  |
| 3.1 | The Purpose of the Procedure .....                               | 4  |
| 3.2 | Capability – A Definition .....                                  | 4  |
| 3.3 | The Scope of the Procedure .....                                 | 4  |
| 3.4 | Serious Capability Issues .....                                  | 4  |
| 3.5 | Timescales .....   | 4  |
| 3.6 | Equality Act 2010 .....  | 4  |
| 4   | Flowchart of the Procedure .....                                 | 5  |
| 5   | Informal Action .....  | 8  |
| 5.1 | Addressing Capability Issues Informally.....                     | 8  |
| 5.2 | Reviewing Performance .....                                      | 8  |
| 6   | Formal Procedure.....  | 10 |
| 6.1 | Stage 1 – Formal Capability Review Meeting.....                  | 10 |
| 6.2 | Stage 2 – Formal Capability Review Hearing.....                  | 11 |
| 6.3 | Making an Appeal .....   | 12 |
| 7   | Additional Guidance for Managers .....                           | 15 |
| 7.1 | Capability vs Disciplinary.....                                  | 15 |
| 7.2 | Examples of Capability Concerns .....                            | 15 |
| 7.3 | How to measure and monitor performance? .....                    | 15 |
| 7.4 | Tackling Poor Performance.....                                   | 16 |
| 7.5 | Keeping Written Records .....                                    | 16 |
| 7.6 | Health or Other Personal Issues .....                            | 16 |
| 7.7 | Order of Events at a Formal Capability Review Hearing .....      | 17 |
| 7.8 | Order of Events at an Appeal Hearing.....                        | 17 |
| 7.9 | Dismissal.....   | 18 |
| 8   | Related Documents.....   | 19 |
| 7   | Appendix A – Official - Sensitive – Improvement Action Plan..... | 20 |
| 9   | Definitions.....   | 21 |

### **3 Introduction**

#### **3.1 The Purpose of the Procedure**

The purpose of the Capability Procedure is to provide a framework through which managers can work with employees to achieve, maintain, and improve their performance, and to encourage and support where necessary.

The aim of the Capability Procedure is to ensure that employees of the Isle of Wight Council / Schools are treated fairly, consistently, and given every opportunity to fulfil their role and potential.

#### **3.2 Capability – A Definition**

For the purposes of this procedure, capability is defined as:

‘An employee's ability to perform the work expected of them to the required standards.’

If an employee falls below the required standards, as a result of a lack of skill, aptitude, or ability, appropriate action should be taken.

#### **3.3 The Scope of the Procedure**

This procedure applies to all employees of the Isle of Wight Council and is non-contractual. For clarification this also includes all school support staff, including employees of schools where the council is not the employer, but the Governing Body has adopted the policy. It also applies to Chief Officers.

It does not apply to the Chief Executive, teachers, contractors, or agency workers.

The procedure does not apply to cases involving misconduct, or unsatisfactory performance during a probationary period. In such cases, reference must be made to the Disciplinary Procedure or the Probationary Procedure respectively.

#### **3.4 Serious Capability Issues**

If the capability issue is believed to be very serious, you can invoke Stage 2 of this process, being the ‘Final Capability Review Hearing’, at the outset, even for a first occurrence. Where serious errors have been made to the detriment of the organisation, we may decide to use our disciplinary policy instead.

#### **3.5 Timescales**

For the purposes of this policy, whenever a number of ‘days’ are referred to, these will always exclude weekends and bank holidays. For term-time only these will also exclude school holiday periods.

#### **3.6 Equality Act 2010**

Account will be taken of any reasonable adjustments required under the Equality Act 2010 as part of this process, including at any informal or formal meetings.

## 4 Flowchart of the Procedure

*(The numbers against each heading refer to the relevant section of the procedure.)*

### Deciding on appropriate action

The line manager should make a judgement on the seriousness of the issues and whether they should proceed straight to the formal procedure.

### *Informal Action (4)*

#### (4.1) Informal action

The line manager attempts to address the capability issue with the employee by meeting to discussing the concerns and agreeing an Improvement Action Plan where appropriate.



#### (4.2) Reviewing performance

The line manager meets with the employee to review progress.

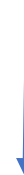
**Q Has the required improvement been achieved?**

**YES**



Confirmation letter sent to employee and then no further action.

**NO**



### *Consider moving to formal procedure (5)*

The line manager meets with HR to discuss case to ensure that the informal route has been exhausted before proceeding to the formal route.

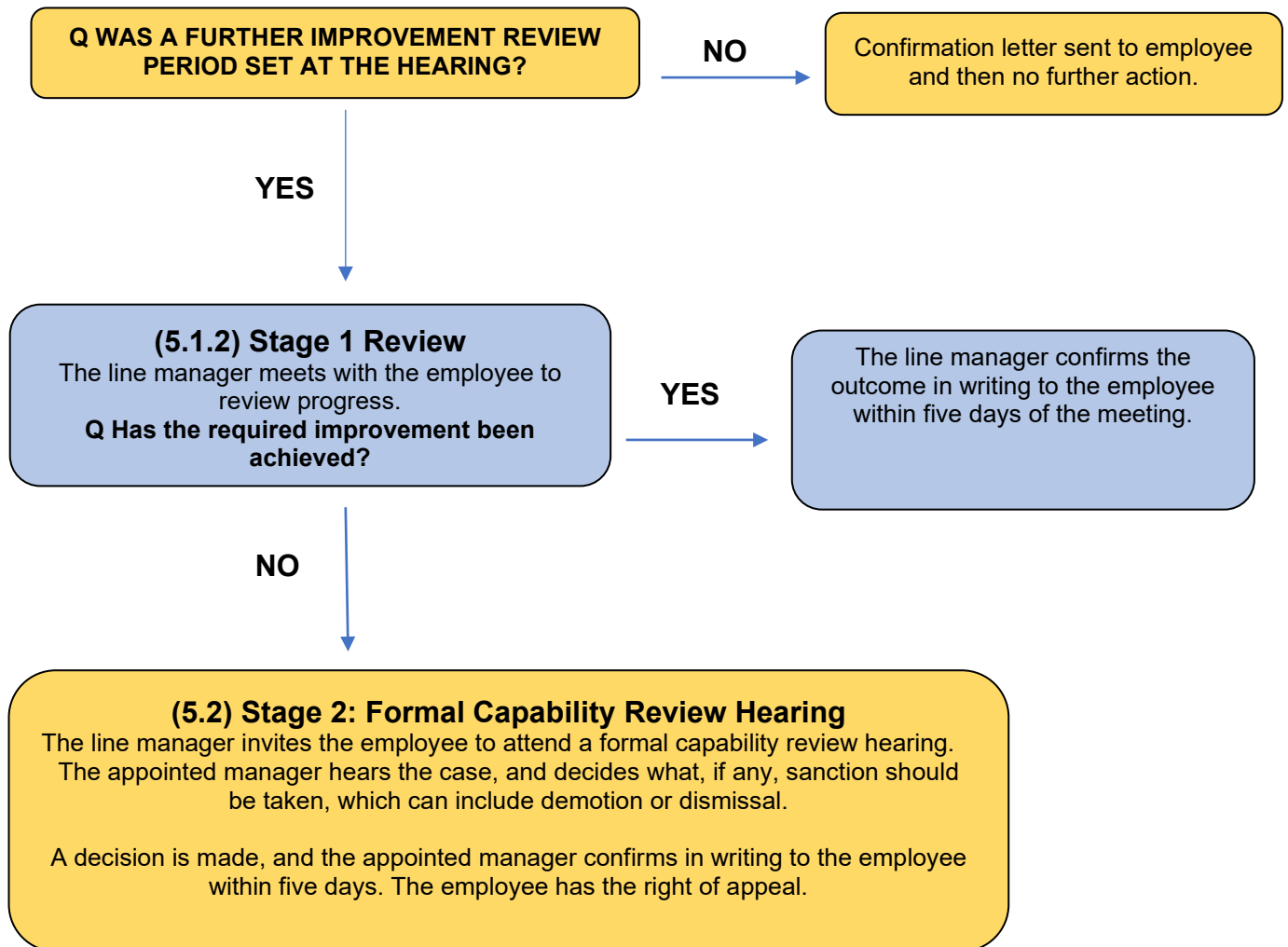


#### (5.1) Stage 1: Formal Capability Review Meeting

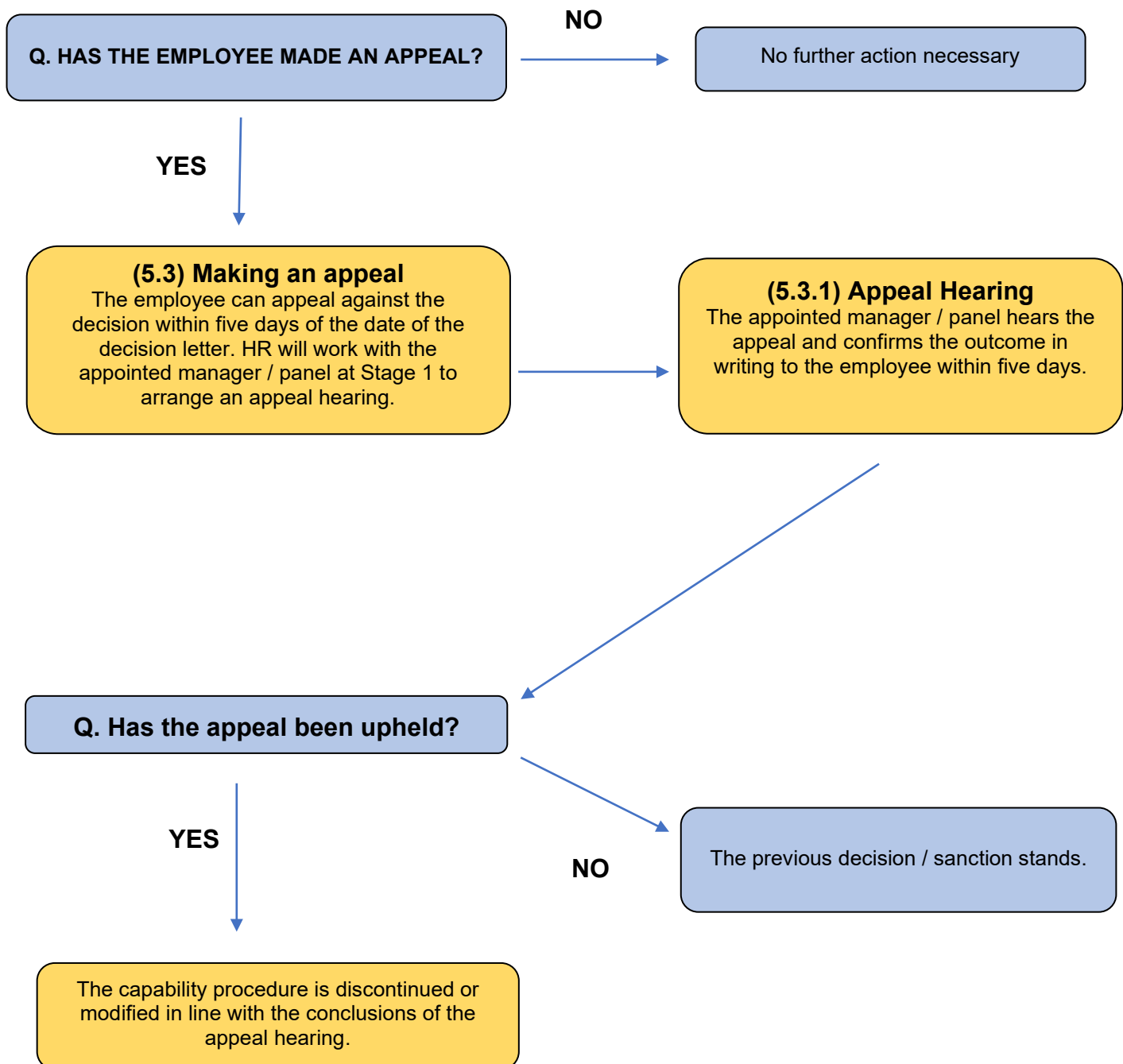
The line manager meets with the employee formally and considers the matter in full.

A decision is made, and the line manager confirm this in writing to the employee within five days. The employee has the right of appeal.





### ***Appeal (5.3)***



## 5 Informal Action

### 5.1 Addressing Capability Issues Informally

Capability issues should normally be dealt with informally between you and your employee as part of the day-to-day management process.

The first action will be for you to determine whether the poor performance is a capability issue or misconduct of some kind. If the latter, this should be addressed via the Disciplinary Procedure.

Your role as the line manager's is to:

- Meet with your employee to explain the problem and discuss the performance issue in detail. Factual examples of unsatisfactory performance should be given.
- Give your employee the opportunity to explain their performance.
- Investigate the matter further as necessary, to identify the causes of the poor performance. This could include lack of skills, insufficient training, lack of support, volume of work, inadequate resources, lack of communication, problematic working relationships, or mitigating circumstances of some kind.
- Outline the required standard of performance, explain the apparent shortfall and define the improvements required.
- Agree any further appropriate action to address the shortfall in performance with your employee, including additional support e.g. coaching, mentoring, more regular supervisions, development and / or training.
- Define a timescale for monitoring and reviewing progress. Where appropriate, this review period may be included within a structured written Improvement Action Plan (IAP: **see Appendix A**) developed with your employee, which will also include establishing a monitoring process. A copy of the IAP paperwork will be given the employee.
- Explain that lack of improvement in performance may result in formal action under this procedure.
- You should confirm the above points to your employee in writing.

### 5.2 Reviewing Performance

If your employee's work performance has improved to the required standard during the review period, you should meet with them to inform them of this.

Following the successful completion of an informal performance improvement action plan, your performance will continue to be monitored. If, at any stage during the following



12 months, your performance again starts to fall short of an acceptable standard, your manager may decide to initiate stage 1 of the formal procedure.

If your employee's performance does not reach the required standard by the end of the review period, you will meet with your employee to explain the shortcomings and allow them to respond. You may decide to extend the performance review period if you feel that this could address the problem satisfactorily. However, if you consider that your employee has failed to attain the required performance standard without justifiable reason, and/or the poor standards are likely to continue, the matter will be referred to the formal stage of this procedure.

## 6 Formal Procedure

You should arrange a meeting with HR at this stage to discuss the case and agree any further action before contacting your employee.

### 6.1 Stage 1 – Formal Capability Review Meeting

At the end of the informal review period, or if the poor performance is sufficiently serious to necessitate taking more formal action immediately, you will write to your employee, inviting them to a formal capability review meeting, giving them at least five days' notice. You will also provide them with the documentation you intend to refer to in this meeting and allow them to submit any documentation at least two days before the date of the meeting.

The letter of invite must contain enough information about the nature of the poor performance to enable your employee to prepare appropriately. The letter will also give details of the likely outcome if it is decided at the meeting that the employee's performance has failed to meet the required standards.

HR will attend to provide support at this stage and the employee has the right to be accompanied by either a work colleague or a trade union representative.

#### 5.1.1 Stage 1 – Possible Outcomes

Having reviewed all of the documentation, and taken into account representations from your employee and/or their representative, you may decide on one of the following outcomes,

- to adjourn the meeting to obtain further information,
- to confirm that, on review, your employee's performance is satisfactory and therefore the formal process will end,
- to confirm that the employee's performance is below the required standard and issue a formal warning which will make clear what improvement is required, the timescales within which this must be achieved, and the consequences of failing this.

A formal outcome letter will be sent to your employee within five days of this meeting and, if a formal warning has been issued, detail the employee's right of appeal.

#### 6.1.1 Stage 1 – Review

You will meet with your employee, in accordance with the timescale agreed at the Stage 1 meeting to discuss their progress and decide whether sufficient improvement has been achieved. You may decide to hold a review meeting earlier than planned if there are serious concerns about your employee's performance and its impact on the work and/or team.

If your employee's work performance has improved to the required standard during the review period, you should inform them of this, and that no further action will be taken. This should be followed up in writing within five days.

If your employee's performance does not reach the required standard by the end of the review period, you will explain the shortcomings and allow your employee to respond. You may decide to extend the performance review period if you feel that this could address the problem satisfactorily. However, if you consider that your employee has failed to attain the required performance standard without justifiable reason, and/or the

poor standards are likely to continue, the matter will be referred to Stage 2 and go to a formal capability hearing.

## 6.2 Stage 2 – Formal Capability Review Hearing

Stage 2 will take place where:

- If your employee has failed to make sufficient progress to achieve the required standard, or
- Where their performance is sufficiently serious to warrant instigation of the formal procedure
- Where an apprentice (those directly on an apprenticeship programme, and those existing employees who have signed onto an apprenticeship to upskill in their existing role as part of their professional development) fails to fulfil their learning provider requirements, stage 2 will be initiated without the need for stage 1.

A 'Formal Capability Review Hearing' will take place.

### 6.2.1 Appropriate Person(s) to Hear the Case

The Stage 2 hearing should be chaired by a senior manager who has not previously been closely involved with the case and has the authority to dismiss (e.g., Service Manager, Panel of Governors).

In the case of a Chief Officer, a Panel of Members will conduct the hearing. The Panel should include no fewer than three elected Members and should not include any Member or officer with direct involvement in the matter.

HR will attend to provide support at this stage and the employee has the right to be accompanied by either a work colleague or a trade union representative.

**(Please see section 6.7 of the additional guidance – 'Order of Events at a Formal Capability Review Hearing')**

### 6.2.2 Stage 2 – Possible Outcomes

The Service Manager, Panel of Governors, or Panel of Members conducting the proceedings will ensure that a fair hearing is given. The outcome of which could be,

- to adjourn the hearing as further information is required,
- to confirm that, on review, your employee's performance is satisfactory and therefore the formal process will end,
- to allow an extension to the Stage 1 process with revised timescales,
- to confirm that the employee's performance is below the required standard and issue a further sanction which could include demotion or dismissal,

If dismissal is the outcome, then redeployment may be considered and, if so, the employee will be added to the redeployment register for the period of their notice. Access to redeployment will only be offered where we are confident that your employee will be able to perform well in a redeployed role.

The hearing should not impose a sanction which would involve you returning to your current post. **(Please see section 6.9 of the additional guidance – 'Dismissal')**

As soon as possible after the conclusion of the hearing, the person chairing the hearing will convey the decision verbally to the employee and follow this up with confirmation in writing within five days. The letter will also detail your employee's right of appeal.

## 6.3 Making an Appeal

Your employee has the right to make an appeal against any sanction imposed at any stage of the formal capability procedure, including dismissal. The request for an appeal must be made in writing to HR or in the case of schools, to the Clerk to the Governors.

The appeal must be made within five days of the date of the decision letter at Stage 1 or Stage 2 and must state clearly the grounds upon which an appeal is being made. Save in exceptional circumstances, your employee may only make an appeal on the following grounds:

- **the penalty:** this was too severe given the circumstances of the case; and/or
- **new evidence:** evidence has come to light since the disciplinary hearing and was not reasonably available at the time of that hearing; and/or
- **procedure:** it is considered that the Capability Procedure was not followed correctly.

The appeal will normally take place within twenty days of receipt of your employee's written notice of appeal or on a date which is mutually agreed by the parties.

### 6.3.1 Appropriate Person(s) to Hear the Appeal

For appeals against dismissal for staff appeal hearings including Chief Officers (excluding school staff), the appeal will be referred to the Appointment and Employment Committee as per the Council's Constitution. For school staff this matter will be referred to a panel of governors with no prior involvement in the case.

An appeal, not against a dismissal, may be conducted by another manager who has the necessary experience to chair such a hearing. They will consider the grounds that have been put forward and review the conclusion reached in the original capability hearing.

However, for any sanction *short of dismissal* relating to Governance Statutory Chief Officer, the Appeals Committee has the power to hear any appeal and to take any decision either to confirm the action or to impose no sanction or a lesser sanction and any other power reasonably required to undertake its role.

Any appeal against a notice of dismissal, or issue of capability of a Governance Statutory Chief Officer or a Director will be considered by a sub-committee of the Appointments Committee, comprising three members who have not had any prior involvement in consideration of the case. Where necessary, members can be drawn from the wider membership. The membership shall also include two independent persons when dealing with action in respect of a Governance Statutory Chief Officer.

This will be arranged as soon as is reasonably practicable but within ten working days. However, if this is not possible, the employee will be informed of the reason for any delay.

HR will attend to provide support at this stage and the employee has the right to be accompanied by either a work colleague or a trade union representative.

At the hearing the employee will be given the opportunity to explain their grounds for appeal.

Depending on the circumstances, the hearing may either solely consider the points that they have raised, or it may reconsider the whole case and reach its own conclusion on the correct outcome.

**(Please see section 6.8 of the additional guidance – ‘Order of Events at an Appeal Hearing’)**

### **6.3.2 Appeal Hearing – Possible Outcomes**

The relevant appeal chairpersons will,

- consider all the evidence, including any new evidence presented,
- determine whether the grounds for the previous capability sanction were valid,
- determine whether the sanction should remain the same, or should be increased, reduced, or removed.

As soon as possible after the conclusion of the hearing, the person chairing the hearing will convey the decision verbally to your employee and follow this up with confirmation in writing within five days. The decision of the Appeals panel/committee is final.

If the result of the appeal is that a decision to dismiss your employee is overturned, they will be reinstated with immediate effect. They will be reimbursed in full for any wages lost since their dismissal. They will also be required to repay any monies paid in respect of pay in lieu of notice or holiday pay if they wish their holiday entitlement to be reinstated



## 7 Additional Guidance for Managers

Please also see [Performance Management – Guidance and Tips for Managers](#) on the intranet or via SharePoint for schools.

### 7.1 Capability vs Disciplinary

When deciding how to tackle an employee's performance, consider the cause and the definitions below,

**Capability** – is usually the result of lack of skill, aptitude or ability and is outside the employee's control.

**Disciplinary** – is usually the result of unacceptable and improper behaviour that is within the employee's control.

An initial conversation, where you ask open questions, and take time to listen to the answers, is important to fully understand whether you are dealing with a capability or disciplinary issue. If you remain unsure, discuss this with you HR advisor. Once decided, refer to the relevant policy.

### 7.2 Examples of Capability Concerns

Below are some examples of capability concerns, but this is not an exhaustive list.

- Poor quality of work, below the expected standard that has been communicated to employees.
- Low output, below the expected standard that has been communicated to employees.
- Consistent / repeated failure to meet deadlines, agreed objectives or targets.
- Consistent / repeated inability to recognise common problems and find appropriate solutions.
- Consistent / repeated failure to accept changing work priorities.
- Consistent / repeated unreasonable inflexibility in team working.
- Despite appropriate guidance and support, a continuing inability to adapt to change (e.g., changes in work practices and / or targets).
- A demonstrable lack of skill, knowledge and / or ability to learn, despite appropriate coaching, training, and support.

### 7.3 How to measure and monitor performance?

To be able to measure performance, you first need to know and be able to communicate to your employee, what the acceptable level is. This can be done via a variety of methods, for example,

- give your employee a robust induction to the job role
- refer the employee back to their job summary
- give your employees examples of the appropriate quality of work you require

- give your employee examples of the quantity of work that is required in a given period
- make your employee aware of when they fall below what is expected of them.

All of the above will differ depending on the job role. Likewise monitoring performance, can be done via a variety of methods, for example,

- by holding regularly one-to-one meetings with your employee
- by reviewing their work, either by shadowing, review of paperwork, etc
- by reviewing any positive or negative feedback from their customers, clients, other colleagues

## **7.4 Tackling Poor Performance**

If you identify poor performance at any level, then it should be dealt with as soon as reasonably possible and dealt with as informally as possible, unless the issue is of a more serious. Our aim is to try to support our employees to raise their performance back up to an acceptable level. Consider what can be put in place to help the employee and agree actions. Use an Improvement Action Plan to detail the support that will be put in place and what improvement is expected of the employee. If there are actions for you as the manager, ensure you following them up promptly.

Review at the agreed time and, if improvement made, then continue to monitor employee, like any other, during one to ones, etc. If the required improvement has not been made, then move forward to the formal process.

If you believe that the issue is more serious and should move straight to the final stage of the process, then please contact your HR Advisor to discuss before taking any action.

## **7.5 Keeping Written Records**

It is advisable to keep clear and concise records at all stages of this procedure, including the informal stage, to maintain an audit trail of what has been discussed and agreed. Follow up conversations with your employee in writing so that they are clear about what has been discussed, any actions that need to be taken, and any review dates given. This also give the employee the opportunity to come back to you if they remain unclear.

## **7.6 Health or Other Personal Issues**

Where health issues or disability could be an underlying cause of your employee's poor performance, we recommend that you consider referring them to Occupational Health, their GP, or any other source of information that may provide additional useful information in order to support them. Further information can be found in the Attendance Management Policy. Where other personal issues could be involved (e.g., bereavement, domestic abuse), you may need to facilitate access to other sources of support for your employee such as the council's employee assistance programme and other outside agencies. Your HR Advisor can assist you in deciding on the appropriate route.



## **7.7 Order of Events at a Formal Capability Review Hearing**

The purpose of a formal capability hearing will be to establish the facts about the employee's performance and decide what, if any further action should be taken.

The format for the formal capability hearing will normally be as follows:

1. The Chairperson leading the hearing will introduce the parties and then explain the purpose of the hearing and how it will be conducted. The Chairperson will state that the hearing is being conducted as part of the council's / school's formal capability procedure and confirm that a written record of the hearing is being made.
2. The Chairperson will invite the manager to state the case against the employee. The Chairperson, Committee or Panel members, and the employee, and/or their representative or work colleague, may ask any questions about the circumstances of the capability concerns in order to establish all the relevant facts, background and surrounding circumstances.
3. The Chairperson will then invite the employee to state their case. With the employee's approval, or in the absence of the employee, the employee's representative may do this on their behalf. The Chairperson, Committee or Panel members, and the manager may ask any questions in order to establish all the relevant facts, background and surrounding circumstances.
4. At any point during the hearing, the Chairperson may adjourn the proceedings if it appears necessary or desirable to do so, including for the purpose of gathering further information. Any party may also make a request to the Chairperson for an adjournment at any time during the hearing.
5. Once all the evidence has been heard, the Chairperson will ask the manager and then the employee to sum up the key points of their evidence.
6. The Chairperson will try to reach a decision on the same day as the hearing. If this is not possible, however, the Chairperson will inform the employee of their decision within five days. The Chairperson will confirm their decision in writing to the employee.
7. The Chairperson will inform the employee of their right to appeal against the outcome of the hearing.

## **7.8 Order of Events at an Appeal Hearing**

The purpose of an Appeal Hearing will be to establish whether any of the grounds for the appeal should be upheld or not.

The order of events will be the same as for the formal capability hearing above, except that at (2) the Chairperson will invite the employee to state the grounds for their appeal first and at (3) the manager will then state their case.

If the decision taken at a Stage 2 final capability hearing is upheld by the appeal hearing, this decision will be final and there will be no further right of appeal.

## **7.9 Dismissal**

Where the outcome is dismissal, your employment will be terminated for the reason of capability, namely the inability to properly perform those duties required of the post or where there is no reasonable prospect that this may change in the future. The termination will normally be with full notice or payment in lieu of notice, except in cases of gross negligence where dismissal could be without notice, or payment of notice.

Where redeployment is recommended, a dismissal notice will be issued, however, during your contractual notice period every effort will be made to find suitable alternative employment. If a redeployment opportunity is taken, the pay and conditions of the new post will apply, i.e. there will be no salary protection. If no suitable alternative is found during the notice period, your employment will end at the end of your notice period.

You will be informed of your right of appeal to a named relevant person and the time period in which you must make the appeal. The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision may be revoked with no loss of continuity or pay, and you may be reinstated to your post or to a suitable alternative, under the redeployment policy.

## 8 Related Documents

Corporate Plan

[Corporate Plan 2021 - 2025 \(iow.gov.uk\)](https://www.iow.gov.uk/corporate-plan-2021-2025)

## 7 Appendix A – Official - Sensitive – Improvement Action Plan

Name of Employee:

Job Title:

Service / School:

Name of Line Manager:

1. Does the employee hold an up-to-date copy of their:
 

|  |          |
|--|----------|
| a. Job description/job summary               | YES / NO |
| b. Person specification/generic role profile | YES / NO |
| c. Personal Development Review/CPD record    | YES / NO |
  
2. Summarise the nature and extent of the improvement required:  
  
*(Give specific examples here of where the work has fallen below the required standard)*
  
3. Summarise any new objectives and targets set for the employee:  
  
*(Use SMART objectives here and consider the following, are they,*  
  
*Specific*  
*Measurable*  
*Achievable*  
*Relevant*  
*Time-bound)*
  
4. Summarise any proposed new learning activities and / or personal support to assist the employee to achieve the required performance standard(s):  
  
*(For example, training courses, mentoring, coaching, work shadowing, reading, etc)*
  
5. Outline the timescale in which the performance standard(s) must be achieved by the employee:  
  
*(Referring back to SMART objectives in section 3, set a realistic timeframe with your employee so that they have a chance to succeed. For school staff, consider any prolonged school holiday periods and for part-time staff consider that they may need longer to be able to demonstrate an improvement)*
  
6. Outline the monitoring process during the review period:  
  
*(Consider carefully how the improvement will be monitored and by whom, this could be done via a variety of methods including, paperwork review, one to one meeting, feedback from colleagues / clients, etc)*

## 9 Definitions

### Term

Simple, concise definition. [See Plain English Guide here.](#)

### Term

Simple, concise definition. [See Plain English Guide here.](#)