

## CAPABILITY PROCEDURE

Version control table	
Original version published:	April 2015
Current version number:	Version 5
Current date	March 2025
Date current version published:	March 2025
Due date for next review:	December 2026
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Equality and Diversity Impact Assessment dates:	14 <sup>th</sup> March 2025
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## CAPABILITY PROCEDURE

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## CAPABILITY PROCEDURE

### 1 POLICY STATEMENT

#### Introduction

- 1.1. This procedure provides a framework within which line managers should work when dealing with incidences of an employee's poor performance at work. They are intended to provide general advice and, depending on the degree of complexity in individual cases, more detailed advice and support can be provided by the HR Case Management Team (01835 825052 or [askhr@scotborders.gov.uk](mailto:askhr@scotborders.gov.uk)).
  - 1.2. The procedure first of all deals with ways in which to avoid incidences of poor performance. However, with a large and diverse workforce it is inevitable these will occur from time to time and it is important that poor performance is dealt with fairly and effectively.
  - 1.3. These guidelines elaborate on what managers should do by way of early, informal intervention/action to address poor performance. In the majority of cases relating to poor performance one to one counselling by the line manager will normally be enough to achieve an informal resolution. If matters are addressed at the earliest opportunity, it is often possible to avoid the use of the formal procedure.
  - 1.4. The primary objective in cases of poor performance is to get the employee to improve to meet the required standards. Dismissal for poor performance is a last resort only to be taken after all supportive efforts have failed. This support would normally include training, guidance and seeking opportunities for redeployment where appropriate.
  - 1.5. There may be instances of poor performance that have been known about for some time but for some reason have never been drawn to the employee's attention and addressed. Such situations do not preclude the poor performance being addressed, although it will be necessary to take this into account when the matter is progressed. In such cases when the employee's attention is finally drawn to their poor performance it may be necessary to explain that whilst no previous action has been taken that in itself is no justification for not addressing matters now.
  - 1.6. In some cases, performance issues may be a result of an underlying illness, medical condition or disability, for example a roadworker who suffers from arthritis, resulting in a slower pace of work.
2. Where the employee's performance is identified as being unsatisfactory due to illness or a disability, the manager in the first instance should meet with the employee and consider whether any reasonable adjustments could be made to resolve or alleviate the problem. Reference should be made to the Reasonable Adjustments Policy.
  3. Where the performance is affected by substance abuse, reference should be made to the Substance Misuse Policy.

#### 1.2 Principles

Scottish Borders Council (the Council) expects satisfactory standards of performance from all employees. It is implicit in any contract of employment that an employee must carry out the duties

and responsibilities of the post to a satisfactory standard which is reasonable in terms of workload or other agreed pressures.

The line manager must ensure that employees are properly trained, coached and encouraged to perform reasonably and effectively at work. It is part of the normal managerial/supervisory process that an employee is made aware of the required standards and any examples of where they do not meet those standards.

## **2 AIMS AND PURPOSE OF THE POLICY**

2.1 To assist line managers to:

- Support and enable an employee who is required to improve their work performance to attain an acceptable level.
- Act in a consistent manner in managing performance.
- Follow a fair and equitable process.
- Take formal action if necessary.

2.2 To assist Employees to:

- Be aware of the level of performance required.
- Maintain an acceptable level of performance.
- Overcome any barriers to acceptable performance.

## **3 EQUAL OPPORTUNITIES**

3.1 In order to meet its obligations under the Equality Act 2010 and its moral obligations as a public sector employer, the Council is committed to treating all employees fairly. Managers and staff will not discriminate directly or indirectly on grounds of race, colour, ethnic or national origin, religion or belief, sex, gender reassignment, sexual orientation, marital status, disability, age, pregnancy or maternity or trade union membership or activity.

3.2 The Policy is presented in such a way that it enables Managers to clearly communicate the standard of work expected and to ensure the standards are met. It also identifies and implements mechanisms to enable employees to reach the required standard of performance.

3.3 The Policy also acknowledges that performance issues may arise from misunderstandings due to ethnic/ cultural/ sex/ gender reassignment/ disability or other related issues. Where this is evident this must be explored and where relevant the issues resolved.

## **4 SCOPE OF THE POLICY**

4.1 This procedure applies to all employees of the Council except for the Chief Executive, who is covered by a separate procedure.

## **5 LINKS WITH OTHER COUNCIL POLICIES**

5.1 This policy is associated with the following key policies and where applicable should be cross referenced to gain further detail:

- Attendance Management
- Code of Conduct
- Discipline
- Dignity and Respect in the Workplace
- Family Friendly Policy

- Flexible Working
- Investigation
- Mentally Healthy Workplace and Stress Management
- Reasonable Adjustments
- Redeployment
- Substance Misuse
- Training and development
- Working Time Regulations

## **6 POOR PERFORMANCE**

### **6.1 What is Poor Performance?**

Poor performance may be defined as:

- the continuing failure of an employee through lack of skill/ability to meet the requirements of their job, including meeting agreed targets or providing a satisfactory service.
- regular performance by an employee that adversely affects their own ability, and/or that of others, to do their work to an acceptable standard.

Poor performance can show itself in a number of guises. Examples include:

- Poor quality/quantity of work
- Work not completed to required timescales
- Poor judgement
- Poor work relationships
- Poor practice
- Poor attitude
- Inappropriate behaviour
- Not taking responsibility/decisions
- Lack of ability to perform certain tasks

When assessing any potential poor performance it is important to consider the employee's job description, the Council's Competency Behaviours Framework and the employee's, experience and training in order to ensure that performance is being measured against reasonable expectations.

### **6.2 Factors affecting Performance**

These may be categorised as follows:

#### **6.2.1 Personal to employee**

- Skills and level of training
- Difficulty of objectives and tasks
- Motivation
- Behaviour/attitude
- Personal problems

#### **6.2.2 Leadership and management by line manager**

- Clarity of instructions
- Type and frequency of feedback
- Quality of support
- Too low or too high a level of control given to employee over their work.

### 6.2.3 Physical work environment

- Working environment, for example inadequate workstation, space, heat, light and ventilation
- Standard and quality of equipment including protective clothing, if appropriate.
- Number of employees available for tasks or objectives

### 6.2.4 Contextual

- External demands from, for example, other Agencies/Partners
- Internal demands from other departments.
- An environment which is either too stable or is in constant change.

## 7 PRE-REQUISITES FOR GOOD PERFORMANCE

The key to addressing any issue of poor performance is to ensure that an employee is aware of what standards are required of them.

These standards are introduced at various stages:

### 7.1 Recruitment and Selection

It is very important to make prospective employees aware of the standards that are expected of them in terms of job performance and general conduct. It is particularly important to make candidates aware of any specific requirements there might be, for example the need to work shifts, weekends or bank holidays. Key issues such as this may be included in recruitment advertisements and job descriptions should reflect them.

### 7.2 Job Description and Person Specification

#### 7.2.1 Job Description

The job description must contain key issues as noted above. It will also include the main elements of what the employee is expected to do.

These should not be seen as static documents that are only to be reviewed on a change of occupancy. Inevitably, jobs change and where appropriate the job description should be changed in consultation with the employee and if appropriate in consultation with HR.

#### 7.2.2 Person Specification

The Person Specification details the skills, abilities and experience necessary to do the job. Again, this is a form of standard-setting.

Setting clear standards at the recruitment and selection stage means that any individual who is not happy with or cannot meet any of the standards need not apply. This should be seen in a positive light.

Poor performance can occur where an individual takes on a job without fully appreciating the standards required. The earlier that a potential employee becomes acquainted with the standards expected the less likelihood there is of subsequent problems with performance.

### 7.3 Adverts

All adverts must include the essential criteria.

### 7.4 Interview

The interview is the opportunity to explore how closely a person meets the requirements for the role. An interview should be long enough to ensure there is sufficient time allowed for both parties to establish that they are each satisfied with the other.

Whilst it is good practice to cover essential requirements during an interview, the interview should not be the place to set performance standards. It would be very difficult to rely on a comment made during a recruitment interview when dealing with a subsequent poor performance issue. It will be much more effective if standards are followed up in writing and hence why any relevant matters are included in the job description or Person Specification.

## 7.5 Onboarding

The onboarding process is vital. This should not simply be carried out for new recruits to the Council but should be conducted by a manager whenever any existing employee takes up another job. It helps the settling in process and also makes the employee more productive at an earlier stage. The onboarding process should make clear what the expectations are. If the employee is not made aware of the requirements and standards expected, there should be no complaint if these are not met.

An onboarding programme is the ideal opportunity to ensure that the ground rules are set from the first day. Whilst everything cannot be covered on day one, onboarding should be dealt with in a structured manner over the first few days and weeks of employment. The essential issues must be addressed first - for example any health and safety requirements. During the second and subsequent weeks, other rules and regulations should be explained.

The corporate onboarding process must be used. It is vital to avoid any potential future disagreement about the communication of standards. It is all too easy for an employee to allege that they did not know what the rules or standards are. Use of the corporate process will give the manager much greater confidence in tackling poor performance at an early stage.

During the onboarding process employees must also complete the mandatory e-learning modules, if they have not already done so.

These modules are as follows:

- Adult Support and Protection
- Child Protection
- Equality & Diversity online
- Fire Safety Awareness
- Information Management Training
- PREVENT Awareness
- Health & Safety Awareness
- Ani Introduction to Climate Emergency
- An Introduction to Complaints Handling – Modules 1 & 2

To access the courses online visit <https://app.tessello.co.uk/ScottishBorders/login/>

*Log in procedure*

When you reach the login screen please log in using:

- Your Employee number: (employee numbers can be found on your ID badge or your payslip)
- Your Password will be your Surname, case sensitive,
- You will immediately be asked to complete a process to set your password to something more secure and you will be asked to complete a 'Memorable Question' so that you can change your password securely should you forget it in the future.

## 7.6 Formal Supervision

In some areas of the Council, for example Social Work, a formal supervision process exists. This is a 2-way process which enables both manager and employee to discuss all aspects of the

role, responsibility and performance as well as development needs. Good supervision should be open and honest and should focus on positive aspects as well as areas for improvement.

### **7.7 Appraisal/Professional Review**

Appraisals or professional reviews provide further opportunities to set standards and review performance and conduct. It is important for a manager to meet regularly with employees, particularly new employees, in order to review and monitor performance. The formal appraisal process within the Council should take place annually with the option to meet as frequently as agreed or necessary. It is important however that any drop in standards is tackled when it occurs and not stored up until the annual appraisal.

### **7.8 Workload Management**

A manager is responsible for ensuring that the workload of their employees is reasonable and where there are conflicting and competing priorities it is the responsibility of the manager to resolve these. Employees should not be expected to take on workloads without proper support and guidance.

### **7.9 Standards Summary**

- Standard setting is never a one-off event and will occur often in a climate of continuous improvement and change.
- Standards should be SMART: Specific, Measurable, Achievable, Realistic, Time-bound.
- Standards provide a means of determining whether or not the level of performance is acceptable.
- It is essential standards are communicated to the employee. This might be done by reference to procedures, instruction documentation, departmental guidelines, the Competency Behaviours Framework etc.

## **8 PRACTICAL STEPS IN DEALING WITH MATTERS OF POOR PERFORMANCE**

Normally initial concerns regarding performance should be dealt with by the immediate line manager/supervisor as soon as practicable. It is not acceptable to store up examples of poor performance: they should be discussed at the earliest opportunity.

The HR Case Management Team (01835 825052 or askhr@scotborders.gov.uk) are available to give advice to managers on how to deal with poor performance.

If the concerns raise child or adult protection issues advice must be sought from the Public Protection Unit and if appropriate a formal referral made.

### **8.1 Informal stage**

#### **8.1.1 Initial Identification**

This phase starts where the manager first considers the employee's performance to be below a satisfactory level and it may be incorporated within the routine supervision process. Although informal, the manager should keep notes of discussions until the situation has been resolved. The employee should be given a copy of any agreed action plan.

Where performance is considered to be below a satisfactory level, oral feedback should be given as soon as possible in an attempt to resolve matters informally with the employee and assist them to achieve an acceptable level of performance within a reasonable timescale.

The manager should meet with the employee in private to establish why performance is falling short of what is reasonably expected.

The discussion should be two-way and focus on why the employee is thought not to be performing satisfactorily, ascertaining whether the employee accepts, based on the information available, that there is a problem. This is a supportive discussion to allow the employee's performance to improve.

The discussion should focus on what the issues that have been identified are, how these issues have come to light and what is expected of the employee going forward. Any evidence of how the employee is not meeting the standards should be made clear and include details of any issues with the employee's work that you as the manager have witnessed or gained from colleagues, customers or members of the public.

The discussion should be constructive, allowing the employee to put forward suggestions/views on how performance may be improved.

Discussions should also take place about any training which would assist the employee in reaching a satisfactory level of performance.

It will also be necessary to check:

- that clear guidance or instruction has been given to the employee as to what is required of them to perform the duties of the post to a satisfactory level, and
- that adequate supervision has been provided.

The manager should also in, conjunction with the HR Case Management Team, consider whether Occupational Health advice should be sought on:

- whether the work is detrimental to the employee's health or well-being
- whether the employee is capable of performing to a satisfactory standard or
- if any modification should be made to the job (for example, in terms of hours or patterns of work, responsibilities, etc.)

It is important to identify such issues at an early stage to ensure the Council meets its obligations under the Equality Act. Reference should be made to the Reasonable Adjustments Policy.

Any matters related to a poor sickness absence record should be dealt with under the Attendance Management Procedure.

At the conclusion of the first informal discussion a date should be agreed for a further review of performance. A reasonable length of time, taking into account the circumstances, should be given to allow for improvement and for any identified training needs to be put into place.

A note of the discussion should be made and retained on the employee's file and a copy of an agreed performance improvement plan provided to the employee. This should cover what the employee requires to achieve to meet expectations, and any training or other support agreed.

The improvement plan should cover the following:

- A description of the required standards.
- A description of the actions to be taken to meet each of these standards.
- Any support or assistance to be made available (see below).
- Milestones and timelines for each of the standards.

A template to be used for improvement plans is on the intranet: Your Job > Human Resources > Policies, Procedures & Guidelines. This template should be used in all cases.

### 8.1.2 Support and Monitoring during the Review Period

#### Support

Depending on the circumstances, if for example personal difficulties are causing a problem, it may be possible to introduce temporary changes to alleviate any specific difficulties such as modification of hours, patterns of work, responsibilities, etc Arrangements for support may also include the following:

- Direct supervision/support from an appropriate person
- An opportunity to observe other colleagues at work within the department
- An opportunity to visit other locations/agencies to view best practice
- Attending training sessions
- Coaching and mentoring
- The provision of written guidelines, policies and procedures
- In the case of employees with a disability, an adjustment, for example the provision of equipment. (See Reasonable Adjustments Policy).

#### Monitoring

Within this informal stage it should be made clear to the employee what is expected by way of performance and the timescales in which any improvement in performance is expected. There is a need to be specific about work targets and ensure that the outcomes are measurable or include criteria for success.

The manager will set the recommended timescale for the required improvements. They must allow a reasonable time for the employee to improve. As a recommendation, timescales should allow the employee at least one month. It should generally not exceed three months.

The employee should be advised that the formal procedure may be invoked if there is a failure to make the necessary improvement within an agreed timescale or where any improvement is not sustained. Time for improvement is included in this informal phase.

In some cases, improvement can be achievable in a matter of weeks and in other others it may be months. In the event of external scrutiny by an Employment Tribunal there will be an expectation that we, the employer, have acted reasonably and allowed for adequate time for improvement to be achieved and assessed.

Monitoring periods may be extended in certain circumstances, for example if specific training had been agreed to bring about the necessary improvement in performance which, for some reason, had not been delivered.

If an employee does not accept a problem exists then it is unlikely that a constructive response will be obtained. If this is the case, it may justify shortening the monitoring period which might have otherwise been allowed to bring about an improvement.

Alternatively, there may be a decision to move straight to the formal stage. Advice must be sought from the HR Case Management Team before making this decision.

### 8.1.3 The End of the Review Period

At the end of the monitoring period there should be a review meeting from which there are three possible outcomes:

- If performance has reached a satisfactory standard the employee should be informed that no further action will be taken, as long as the improvement continues to be sustained.
- If it is thought that the required improvement in performance has not been made or is insufficient and/or is not made within the agreed timescale consideration should be given to whether or not to extend the review period.
- Depending on the level of progress it may be considered appropriate to proceed to the formal stage. Advice at this stage must be sought from the HR Case Management Team.

#### **8.1.4 Employee Concerns about Performance Management**

If an employee considers that there are no legitimate concerns about their performance, they should write to the manager's line manager setting this out and raising any other matters they think should be considered.

This should be submitted within 5 working days of the initial meeting.

An appropriate senior manager will be appointed to consider the position.

They will obtain the views of the manager as to why the performance improvement process is required and the evidence the manager has gathered in support of this.

They will then consider the information from the manager and employee and decide whether the performance improvement process is appropriate.

They will inform the employee and manager of their decision within 10 working days of the employee's submission.

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#### **8.2 Formal Stage**

To activate this stage, a report must be prepared by the manager who has dealt with the informal phase. The report should recommend a capability hearing on the basis of poor performance. The line manager who dealt with the informal phase cannot conduct any hearing at the formal phase.

The report must describe the poor performance and be specific in terms of the gap in expected performance. It must include details of any informal steps that have been taken including any agreed improvement plans and timescales together with the results achieved.

It is not the role of the person preparing the report to propose any outcome.

An appropriate senior manager will decide whether or not to accept the recommendation that a formal capability hearing be held. If the recommendation is not accepted further informal action may be proposed.

Even where the formal procedure is used to address poor performance and formal action is taken it still may be appropriate for further training and support to be given.

Should poor performance arise as a result of conduct - ie the employee has control over their actions, the Disciplinary Procedures for Misconduct should be followed. For example, if the employee is absent without permission.

If, however, poor performance is a capability issue - ie the employee has no control over it, the Capability Procedure should be followed. For example, if an employee becomes unable to do their job due to an illness or disability, and adjustments or support could not help, or the employee does not have the skills to carry out the role to an appropriate standard and this cannot be resolved within a reasonable timescale.

## 9 CAPABILITY PROCEDURE

The manager will inform the employee of progress to a Capability Hearing when:

- there is a failure to improve performance.
- the improvements are not satisfactory.

The hearing should be convened by a senior Manager who has had no involvement at any previous stage of performance monitoring

Prior to a hearing the manager who has managed the employee through the capability process will submit a capability report outlining the circumstances for consideration.

The manager should ensure that, where appropriate, up to date Occupational Health advice has been sought and is reflected in the report.

### 9.1 Capability Hearing

The manager chairing the Hearing must contact the HR Case Management Team before any capability hearing is arranged for advice on the case. This is to ensure that:

- all appropriate steps have been taken
- sufficient investigation has taken place to establish whether to proceed to a formal hearing
- advice is given on the fair application of the procedures

Only managers who are authorised to dismiss staff can chair a Capability Hearing.

The person who chairs the hearing (“the Chair”) is responsible for ensuring that all appropriate arrangements are made for the hearing and that all the necessary people are able to attend, including any management witnesses and advisors.

The Chair may be accompanied by a member of the HR Case Management Team who provides professional advice, and the employee also has a right to be accompanied.

The Chair will give the employee at least 2 weeks’ notice in writing of the hearing The letter shall include:

- the reason for the Capability Hearing
- the date, time and venue of the hearing
- the employee’s right to be accompanied
- the employee’s right to call witnesses and the timescales for submitting a written response to the case together with any supporting documentary evidence
- the procedure that will be followed during the hearing
- the fact that formal action, including dismissal, may result from the hearing

A copy of any management report or investigation report will be sent to the employee in advance of the hearing with their letter.

The employee is required to submit any written evidence that they intend to refer to at the hearing and advise the Chair of the hearing of the names of any witnesses they would like to call, at least 4 days prior to the hearing.

Where a capability hearing is to be convened for a trade union representative, after obtaining the employee’s agreement, the case will be discussed with a senior trade union representative or full-time official prior to the hearing as to who the matter will be reported to within the union.

## 9.2 Employee Representation

Employees have a statutory right to be accompanied to formal Capability Hearings and appeals by someone who is either:

- a workplace colleague
- an accredited trade union representative who is trained or experienced in being a representative in disciplinary hearings (as certified by the trade union)
- an official employed by a trade union
- Solicitors will not be accepted as representatives, except in certain hearings that may lead to dismissal where they may be allowed as companions at the discretion of the Council. This will apply mainly when a decision to dismiss will potentially have a wider effect on the employee than the loss of their employment with the Council, for example where it will lead to a referral to the General Teaching Council or Scottish Social Services Council.
- No one else is permitted

The accredited trade union representative/ workplace colleague can address the meeting or hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. They do not, however, have the right to answer questions on the employee's behalf.

If the employee wishes to be accompanied, they need to make a request to the Chair, giving the name of the person proposed. All reasonable requests will be approved. Exceptions can include a colleague whose attendance might create a conflict of interest.

No one is obliged to agree to a request by the employee to accompany them. If they do agree, they will be given reasonable time off to familiarise themselves with the case. Further advice is available from the HR Case Management Team on the role and responsibilities of the accompanying person.

## 9.3 Inability to attend a Capability Hearing

If the accredited trade union representative/ workplace colleague cannot attend the hearing, in principle it can be re-scheduled once within 2 weeks.

If an employee is unable to attend the hearing, they must contact the Chair of the hearing at the earliest opportunity to explain the reason. If the Chair, in consultation with the HR Case Management Team as appropriate, considers the reason to be valid and sufficient, the hearing will be postponed. The hearing should be rearranged as soon as possible taking into account the circumstances for the delay.

It is recognised that employees and witnesses may feel stress at the prospect of attending a formal hearing. However, hearings will not normally be postponed for longer than 2 weeks as a result of any stress related sick leave. Employees should consider using the counselling service provided by **Aviva DigiCare+ Workplace**.

If the employee cannot (or does not) attend a re-scheduled hearing, consideration may be given to convening a hearing in their absence. The employee will be notified of this and given the opportunity to send their accredited trade union representative/ workplace colleague to attend on their behalf and/or submit a written statement.

## 9.4 Holding a Capability Hearing

### Overview

Attending a hearing does not mean that formal action will automatically be taken. It is an opportunity to clarify the issues. The Chair can ask questions and clarify issues at any stage throughout the hearing.

The employee will be asked to respond to the report and the Chair will reach a decision, based on the balance of evidence (verbal and/or documentary) on whether formal action is necessary and, if so, which level of action is appropriate. Should the Chair need more evidence or advice, the hearing can be adjourned for it to be provided.

### Participants in the hearing

Hearings normally consist of the employee (with an accredited trade union representative/ workplace colleague if preferred) the Chair (with a colleague or advisor, if preferred) and the author of the report.

Where appropriate witnesses may be called to the hearing to help clarify the facts of the case.

Employees who are accompanied need to decide beforehand what their respective roles will be during the hearing. The role of the accompanying person is covered briefly above.

### Introducing the hearing

The Chair will make the necessary introductions. The approach should be formal and polite, with a view to establishing the facts.

The Chair will explain that the purpose of the hearing is for them to consider whether formal action needs to be taken in accordance with the Council's policy on Managing Work Performance. The procedure for the hearing will also be outlined, with the employee asked to confirm they understand the procedure.

### Presenting the management position

The Chair will state clearly the issue and ask the employee to respond.

The Chair will then call upon the author of the report to present their case and any witnesses, as appropriate, This can include discussing the contents of any records, documents or witness statements

The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to ask questions including questions to the report author or witnesses.

The Chair (and colleague/advisor) will have a further opportunity to question the report author or witnesses on issues raised during the employee's questions.

### Presenting the employee's response

The employee (and/or accredited trade union representative/ workplace colleague) will be given the opportunity to state their response to the report and present evidence. This may include calling witnesses if appropriate and discussing any witness statements and the contents of any other documents.

The Chair (and colleague/advisor) will be given an opportunity to ask questions including questions to any witnesses.

The employee (and/or accredited trade union representative/ workplace colleague) will be given a further opportunity to question any witnesses on issues raised during the management's questions.

### **Final questions and clarification**

The Chair (and colleague/advisor) may use this stage to clarify any issues and to check that what has been said is understood.

If not already indicated, the employee should be asked whether there are any special circumstances which have not been covered but which may need to be taken into account.

### **Summing up**

The investigating officer will sum-up the case, without introducing any new material.

The employee (and/or accredited trade union representative/ workplace colleague) will sum-up their response, without introducing any new material.

### **Adjournments**

The employee (and/or accredited trade union representative/ workplace colleague) can request an adjournment during the hearing which, if considered reasonable by the Chair, will normally be allowed.

At the end of the hearing, the Chair will adjourn to allow full consideration of all the matters raised, before a decision is taken as to whether or not formal action is warranted and if so at what level.

Occasionally, the Chair may require further fact finding or investigation and, in these or similar circumstances, the hearing may need to be reconvened at a later date to enable further information to be provided and a decision to be made. Any additional written information will be copied to all parties. The hearing will be reconvened as soon as possible.

## **9.5 Outcomes of Capability Hearing**

The main options open to the Chair on consideration of the facts of the case are:

- redeployment
- seek further information.
- allow additional time for improvement.
- dismissal

If the Chair considers that the facts presented do not warrant the employee being dismissed on the grounds of capability, it is open to them to adjourn the hearing for a period of time in order to:

- give the employee an additional opportunity to improve their performance/ in order to meet further reasonable agreed targets within defined time scales, or,
- allow for additional information/clarification to be obtained in respect of points raised at the hearing, or,
- Trial/assess reasonable adjustments agreed by the Chair.

In any of the above circumstances the Chair should confirm the reasons for the adjournment clearly to those present and confirm these in writing to the employee. The letter issued should note: the purpose of this adjournment, any targets which require to be met, how these will be measured and the time scales which have been agreed for review.

Details of the support to be provided to the employee should also be documented.

The Chair should confirm the date when the hearing will be reconvened to all parties present. This should allow reasonable time for either the further investigation to be concluded or for the required improvement in performance to have been achieved.

On reconvening the hearing, the Chair should assess the additional information obtained, or the details of the performance of the employee during the period of adjournment and take a decision as to the most appropriate course of action.

It may be the case that there is an improvement in performance, or additional information is obtained which leads the Chair to the conclusion that dismissal is not appropriate. In such circumstances the Chair should confirm their decision in writing to the employee, detailing the reasons for coming to this conclusion. They should also confirm the required level of performance expected in future.

If no additional evidence is provided to the contrary, or the required improvement in the employee's performance has not been attained during the monitoring, the reconvened hearing may result in the employee being dismissed on the grounds of capability.

### **Dismissal**

If the Chair decides that dismissal is appropriate, this must be clearly stated in the letter confirming the outcome of the capability hearing, together with the effective date for the dismissal. Normally employees dismissed on the grounds of capability will receive payment in lieu of notice and outstanding holiday pay.

### **Right of Appeal**

There is a right to appeal against any of the outcomes of the formal Capability Hearings. The name of the person to whom the appeal should be submitted will be included in the letter confirming the outcome of the Hearing. Any appeal made may be submitted by the employee or their representative. It must however be:

- Made within 10 working days of the date of receipt of the letter.
- Submitted in writing giving full details of the reason for the appeal and including any supporting documentation.

### **Referral to an appropriate Governing Body**

Following the dismissal of an employee or the resignation of an employee in the context of a possible dismissal there may be a requirement to provide information to the appropriate Governing Body, if that employee is employed in an area which is governed by an external Body.

## **9 POSSIBLE PROBLEMS**

### **9.1 Denial by Employee of Inadequate Performance**

An employee who refuses to accept that there is a performance problem will be unlikely to respond constructively to an improvement programme. It is important that at the early stages of the procedure the areas of poor performance are made clear to the employee and that these are evidenced. Where, however, despite attempts to encourage the employee to accept and respond to the shortfalls they will still not accept that a problem exists, the procedure still must be implemented.

### **9.2 Absence**

Should an employee be absent through illness following either informal or formal phases of managing performance, monitoring of performance will be delayed and the illness will be managed in accordance with the Council's Attendance Management Policy. The Line Manager must maintain contact with the employee to ascertain the nature of the absence and likely duration.

In these situations it is important to try and achieve a return to work as soon as practicable.

### **9.3 Redeployment**

Redeployment may be considered when steps have been taken to allow the employee to improve but these have been unsuccessful. The employee will be afforded priority status interviews only where they meet the essential requirements of a new post and the post is at a similar or lower grade.

A trial period of up to four weeks may be offered to facilitate the change of role and training will normally be given where this can be achieved in a reasonable timeframe. The employee would then take on the terms and conditions of the new post, which would be confirmed in writing.

Reference should be made to the Retention and Redeployment Policy.

### **9.4 Poor Performance or Misconduct?**

A distinction must be drawn between an employee's inability to carry out work to an acceptable standard as opposed to lack of performance which is attributable to, for example, a wilful refusal to work satisfactorily or negligence. These latter issues are a matter of misconduct as opposed to poor performance and informal guidance will not normally be appropriate and will usually warrant action under the Council's Disciplinary Procedure.

The previous paragraph can be summarised as: inability to carry out work arises as a result of circumstances outwith the employee's control. This may include health issues or medical conditions.

Misconduct arises from the deliberate or negligent acts of the employee.

Before taking action under the Disciplinary Procedure advice must be sought from the HR Case Management Team.

### **9.5 Incremental Salary Progression**

Incremental progression through the salary scale shall be withheld where an employee fails to achieve the required performance standards.

## **10 IMPLEMENTATION, MONITORING AND REVIEW**

11.1 The outcomes of this Policy will be reviewed at least every two years. If any trends emerge these will be analysed and appropriate steps taken, potentially including a full review of the policy.

11.2 Additionally, as a minimum an impact assessment of the policy will be carried out every two years in accordance with the Council's HR Policy Review programme or as required by legislative requirements in order that the Policy remains relevant and fit for purpose.