



Introduction

The Capability Policy is designed to assist employees to meet and maintain a satisfactory level of performance when they fail to reach the standard for reasons associated with skill, aptitude or physical or mental ability. The emphasis in dealing with capability issues should be open and honest communication backed up by support mechanisms that are aimed to assist the employee reach the required standard of performance.

This policy has been developed not only to provide assistance for employees who are unable to meet the requirements of their existing post but also to recognise the changing nature and standards of performance required in the jobs employees undertake. It also seeks to ensure that the Council/School meets its legislative responsibilities including those associated with equality and diversity, health and safety and dismissal procedures.

Scope

This policy applies to all employees covered by the NJC for local government employees, including school based support staff, and all other employees of the Council for whom there is no other specific procedure laid down in national or local conditions of service, or where contractual conditions specify this procedure.

This policy does not apply to cases involving ill health or conduct issues which are covered by the Positive Attendance Policy, Harassment Policy or the Disciplinary Procedure.

This policy does not apply to employees whose employment is to end during or at the conclusion of a fixed term/temporary contract or a probationary period of service, where dismissal arises from unsuitability for confirmation of appointment, or those subject to redundancy.

Responsibilities

It is everyone's duty to ensure that acceptable levels of performance are achieved and maintained and to take steps to rectify any shortfall.

Employees are expected to:

- Notify their manager/headteacher if they are unsure of what is expected of them or having difficulty in meeting the required standards of performance
- Undertake any training, coaching, counselling or other support offered to enable them to reach the required standard
- Attend interviews, hearings or appeals as required.

Managers/Headteachers are expected to:

- Set appropriate and achievable standards of performance
- Provide supervision and undertake regular appraisals of employees' performance in accordance with the Appraisal Procedure
- Notify employees when they do not meet the required standard and investigate the causes
- Review the requirements of the post and consider whether more flexible working arrangements could be applied without detriment to the service level required
- Provide appropriate support to enable employees to achieve the required standard
- Arrange meetings, hearings and appeals as required under the procedure
- Ensure that accurate records are maintained
- Maintain confidentiality
- Respect employees' rights to representation and encourage this
- Liaise with HR to seek alternative employment if an employee is unable to achieve the required standard in his/her current position.

Human Resources/HR providers are expected to:

- Advise managers/Headteachers on all aspects of this policy
- Support managers/Headteachers in dealing with individual cases
- Provide suitable learning and development opportunities to enable employees to perform their duties to the required standard
- Seek alternative employment if the employee is unable to achieve the required standard in his/her current position
- Monitor the application of the policy to ensure that it is compliant with the Equality and Diversity Policy and associated legislative requirements
- Review the policy to meet the requirements of new legislation and operational needs.

Principles

The Council seeks to achieve and maintain high standards of service delivery through its employees. In order to achieve this it has established standards and monitors performance

whilst providing employees with appropriate support to meet those standards. This may include a review of the job requirements and working arrangements, counselling, training and coaching, and, in cases of sickness or medical incapacity, support from Occupational Health.

In dealing with cases of poor performance the Council distinguishes between:

- negligence, lack of application or attitudinal problems, where the Disciplinary Procedure is applicable
- health, where the Positive Attendance/Sickness Absence procedure is applicable
- lack of required qualifications, training, or the changing nature of the job, where the Capability Policy applies.

Process

When the employee's manager/Headteacher recognises that the employee's performance is unacceptable he/she will hold an informal discussion with the employee to try to establish the reason(s). The employee may be accompanied at this meeting by a co-worker or trade union representative if he or she wishes.

The manager/Headteacher should consider the following actions:

1. Review the standards of the post if they are not reasonably attainable.
2. Explain the new standards and provide help and retraining if the employee's problems arise from a change in the role or standards required in the post.
3. Provide counselling and support where the employee's problems relate to his or her personal life.
4. Provide additional support in the form of training, retraining or coaching where the poor performance is related to the lack of training or supervision.
5. Seek medical advice and referral to occupational health, as detailed in the Positive Attendance/Sickness Absence Policy, if the poor performance is related to the employee's state of health.
6. Consider the provision of reasonable adjustments in accordance with the requirements of the Disability Discrimination Act.
7. Invoke the Alcohol and Substance Abuse Policy if the poor performance appears to be related to alcohol or drug issues.
8. Invoke the Disciplinary Procedure if the employee's poor performance appears to be for reasons of conduct.

As a result of this meeting the manager/Headteacher may need to undertake an investigation to determine which procedure is appropriate. **If, during the course of following the actions outlined in 1 to 8 above a manager/Headteacher realises that they have chosen the wrong procedure they must notify all concerned and adopt the correct one.**

If the reason for poor performance is for any of the reasons 1 to 4 above the employee will be provided with relevant support and their performance will be monitored by the manager/Headteacher for an appropriate period of time. Details of this will be recorded in writing and a copy provided to the employee and his or her representative.

If there is no significant improvement in the employee's performance the manager/Headteacher will arrange a formal interview with the employee to review the situation. The manager/Headteacher will inform the employee, in writing, of the expected standards of performance and where these are not being met and notify him/her of their right to be accompanied by a co-worker or trade union representative at the meeting.

Formal Interviews

At the formal interview the manager/Headteacher will seek to:

- Explain clearly the shortfall between the employee's performance and the required standard
- Identify the cause or causes of the poor performance and to determine what, if any, remedial action e.g. training, support, can be given
- Obtain the employee's commitment to reaching the standard by setting realistic targets
- Inform the employee what will happen if that standard is not met and that dismissal may be an outcome
- Set a reasonable period for the employee to reach the standard and agree on the operation of a monitoring system during that period.

The outcome of this interview will be recorded in writing and a copy will be given to the employee and his/her representative if appropriate.

If the employee believes he/she is unable to meet the standard required, despite the assistance provided, redeployment, a reduction in hours or other alternative arrangements may be considered by the manager/Headteacher in liaison with the employee, his/her representative and HR/HR provider.

At the end of the review period a further formal interview will be held between the employee and his/her manager/Headteacher and co-worker or trade union representative.

At this interview:

- If the required improvement has been made the employee will be told and encouraged to maintain the improvement. The employee's performance will be monitored and further formal review meetings will be arranged as agreed.

- If some improvement has been made but the standard has not yet been met, the review period will be extended. During the review period a further formal interview will be arranged.
- If there has been no discernible improvement, the employee's manager/Headteacher will explain to him/her that they have failed to improve. The Council will determine whether there are alternative vacancies that the employee would be competent to undertake and, if there are, give the employee the option of accepting any such vacancy.
- In a school based setting the Headteacher should in the first instance give consideration to any available positions within the school which would provide suitable alternative employment. For Community and Voluntary Controlled Schools only, the Headteacher should make contact with the local authority for access to the Alternative Employment Scheme and the council's job search support programme.

If no suitable alternative employment can be found or the employee does not wish to accept the alternative employment offered, the Capability Dismissal Procedure will be followed.

Where the employee's poor performance is mainly caused by the changing nature of the job it may be appropriate to pursue the Redundancy Procedure.

Capability Dismissal Procedure

The manager/Headteacher must write to the employee confirming the circumstances that are leading to potential dismissal and inviting them to a meeting to discuss the matter and advising them of their right to be accompanied by a trade union representative or work colleague. The employee will be notified of the meeting as soon as possible but must be given not less than five working days' notice in writing of the date, time and place of the meeting.

The manager/Headteacher will notify the relevant senior manager who will conduct the meeting.

In a school based setting a dismissal due to capability will be dealt with by the Headteacher where Governors have delegated the power to dismiss.

The employee must take all reasonable steps to attend the meeting. If the employee has a reasonable excuse for being unable to attend the meeting, or his/her trade union representative or work colleague is unable to attend, a postponement will be arranged. A new date will be set which does not delay the process unduly. However, where the employee is persistently unable or unwilling to attend without good cause, a decision will be made on the available evidence.

The employee and/or their representative will be given the opportunity to state their case. The manager and others who have been involved in providing support to the employee or seeking redeployment will provide information on what actions have been taken.

After the meeting the senior manager must notify the employee in writing of the decision and notify the employee of their right to appeal against the decision if they are not satisfied with it. This will include details of the senior manager who the appeal should be addressed to.

For County Council staff, where the senior manager decides that capability dismissal is the appropriate outcome, the employee should be given their notice, and informed of their right of

appeal to the Staffing Committee. School based staff should submit an appeal in writing to the Chair of Governors.

If the employee does wish to appeal they must inform the relevant senior manager within 5 working days of the date of notification of the decision of the meeting. The appeal will be acknowledged within 5 working days.

Where the action proposed is short of dismissal, e.g. transfers, demotion or alteration of duties, as a result of the application of this procedure, the employee will be invited to a further meeting to hear their appeal. They must take all reasonable steps to attend. Employees have the right to be accompanied by a trade union representative or work colleague at this meeting.

For County Council employees, where the action proposed is capability dismissal the employee will be invited to have their appeal heard by the Staffing Committee. Employees have the right to be accompanied by a trade union representative or work colleague at the Staffing Committee.

The employee will be informed in writing of the outcome of their appeal.

There is no further right of appeal.

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