

Capability Policy & Procedure



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Capability Policy & Procedure

1. Introduction

“Capability” is the ability of an employee to perform required work to an acceptable standard by reference to skill, aptitude, health or any other physical or mental quality.

This Policy is designed to provide for a consistent and supportive approach to the management of under-performance in the workplace, including work standards, productivity or other capability factors.

It does not deal with discipline and conduct issues, sickness absence (unless attendance is at a level which affects the employee’s ability to carry out his/her duties) or wilful disinclination or refusal by an employee to carry out his/her duties to a required standard. Please refer to the Authority’s Disciplinary Procedure and/or Sickness Absence Management Procedure for further guidance on dealing with any of these issues.

This Policy is designed to deal formally with capability/performance issues and is not a replacement for regular performance appraisals.

The guidance set out in the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures (11th March 2015) is reflected in this Policy.

2. Scope

This Procedure covers all employees excluding staff on the complement of locally managed schools for which a separate Capability Policy exists. It also excludes Heads of Service, Directors and Chief Executive, all of whom are subject to separate capability procedures. Probationary employees are also excluded and a separate procedure applies ([see Management of Probationary Employees Procedure](#)).

3. General Principles

Employers must be mindful of their responsibilities under the Equality Act 2010 when considering capability issues. If concerns about performance relate to an employee’s disability then ‘[reasonable adjustments](#)’ must be considered to assist the employee to improve his/her performance. This may include providing additional equipment, changing work duties and/or hours, seeking redeployment if appropriate. For further advice, please contact the People Management HR Team.

All agreed records relating to an employee’s performance including those relating to this procedure will be retained on the employee’s personal file.

An employee has the right to be accompanied by a companion. A companion can be a trade union representative or official¹ or a work colleague, at all formal stages of this procedure.

¹ The TU representative who is not an employed official of a trade union must hold written certification from their Union that they have experience of or have received training in acting as a companion. This may take the form of a card or letter.

A minimum of 14 calendar day's written notice of a performance management meeting will be given to employees (except at the informal support stage when a shorter timescale can be agreed). This notice period can be reduced by mutual agreement but should be long enough to give the employee time to prepare.

In the written notification of the meeting the employee will be advised of the nature of the performance concerns and where appropriate, copies of any information that will be discussed during the meeting.

At the meeting the employee will be given the opportunity to explain why s/he is not performing at the required standard before agreeing any steps to remedy the situation.

If an employee cannot attend a meeting arranged under this procedure, s/he must advise of the reasons as soon as possible. If the reason is outside the employee's control and unforeseeable at the time the meeting was arranged (e.g. illness), another date will be arranged. If the companion cannot attend, another date can be arranged, provided it is not more than 7 calendar days after the original date.

Failure to attend a performance management meeting without good reason may result in a decision being taken in the employee's absence. The decision will be based on all the information available at the time of the meeting.

If it is decided to proceed with a meeting without the employee being present, s/he should be given the opportunity of sending a representative to attend the meeting on his/her behalf or to make written representations which can be considered at the meeting.

If an employee is represented by a Trade Union representative or official, or work colleague, copies correspondence, meeting notes, etc. will be sent to that person, unless the employee advises otherwise, in writing.

The timescales contained within the procedure can be varied with mutual agreement.

It is good practice to give employees at least one chance to improve before they are issued with a final written warning/improvement notice. However, if the performance is likely to have a harmful effect on the Authority or its services, then it may be appropriate to move straight to a final written warning/improvement notice.

Managers must consider disabled employees' needs during the process and make reasonable adjustments as necessary. For example, ensuring that meeting locations have appropriate access, written information is provided in a suitable format, etc.

All proceedings and records arising must be treated as confidential and kept in accordance with the principles of Data Protection legislation.

4. Roles and Responsibilities

Every manager has a responsibility to ensure that their employees are supported, encouraged, properly supervised and trained to do their job. Open communication channels and regular and effective performance appraisal is key to effective staff management and ensures employees and managers have opportunities to raise concerns and/or problems at an early stage. This policy and procedure aims to provide a framework for dealing with cases where performance does not improve or is serious enough to be dealt with formally

People Management (PM). To ensure consistency, the PM HR Team will provide advice at every stage of the procedure and will monitor and report on the application of the Policy. The PM HR Team will also be responsible for ensuring that written records are retained on personal files for the appropriate period and following the principles of Data Protection legislation.

Line Managers are responsible for the effective performance of those they supervise. Under this policy and procedure, line managers are responsible for:

- setting up informal and formal performance monitoring meetings, and for advising employees of their rights under the Capability Policy
- keeping detailed performance records and making these available to employees at any meetings convened
- meeting and discussing performance issues with employees and agreeing possible solutions
- writing to the employee to confirm the outcome and agreed actions arising from any performance/improvement meeting
- monitoring performance and setting realistic target dates.

Heads of Service are responsible for ensuring the consistent application of this policy/procedure and for hearing appeals at stage 1 and 2.

Directors have overall responsibility for ensuring that managers are appropriately trained to deal with performance issues and for managing and/or overseeing stage 3 of the procedure.

BEFORE EMBARKING ON THIS PROCEDURE, YOU SHOULD BE SATISFIED THAT YOUR EMPLOYEE HAS:	
✓	completed their probationary period (if not, you should use the Managing Probationers Policy).
✓	received an appropriate induction to their job (whether they are new to the Authority or new to the job)
✓	up to date qualifications and skills to do the job or has received appropriate training to keep him/her up to date.
✓	the appropriate level of resources (e.g., IT equipment) to enable them to do the job.
✓	had regular appraisals and that any agreed support has been put in place.

5. Procedure

Investigation

If there is any doubt about whether an issue is a capability or disciplinary issue then an initial investigation should be undertaken to establish whether this or the disciplinary procedure should be followed.

Informal/Initial Support

When a line manager is concerned about an employee's progress or standard of work, this will be discussed as soon as possible and appropriate support put in place (see paragraph 6 Actions and Support for details of the types of support which may be considered). Managers need not wait until the next performance appraisal meeting or may wish to bring the meeting forward to deal with the issues. This will be considered as the informal stage of the capability procedure and employees should be informed that a failure to improve within agreed timescales may result in the formal procedure being invoked. A written note of the agreed outcomes of any such meeting must be made and copied to the employee.

As this is intended to be an informal one to one meeting, employees will not usually have the right of accompaniment.

If informal action does not bring about an improvement or the issue is considered to be too serious to be dealt with informally then the formal procedure must be invoked.

If performance has improved within the timescales, the line manager must meet the employee to inform him/her of this and continue to monitor performance under the usual performance appraisal or supervision framework.

Formal Stage 1

If an improvement is not forthcoming or the issue is too serious to be dealt with informally, a formal meeting with the employee must be set up. The employee must be informed in writing of the date, time and location of the meeting, the right to be accompanied, the procedure to be followed and sufficient information about the performance concerns and its possible consequences to enable an employee to prepare, including performance management records, complaints and any other relevant documents.

The line manager will conduct this meeting and will be accompanied by another line manager from within the department or a PM HR representative. The issues for concern must be clearly stated and the employee given an opportunity to discuss them in detail and put forward their case, ask questions and agree appropriate support if appropriate.

The outcome of the meeting should be to consider:

- the information or evidence submitted by the employee
- whether the issue of a performance development and support agreement is appropriate

- whether the standards of other employees are acceptable and consistently applied
- the employee's position, length of service, past performance and reasonableness of the intended action
- whether training, additional support or reasonable adjustments will assist the employee to improve and if so, what support is appropriate (see paragraph 6 Actions and Support)
- what are realistic timescales in which the employee is expected to improve.

These decisions may not necessarily be made on the same day but will be made within 2 calendar days and the employee advised in writing including a performance development and support agreement, if appropriate. This time limit can be extended by mutual agreement.

In cases of unsatisfactory performance the development and support plan will set out:

- the performance problem
- the improvement that is required
- the timescale for achieving this improvement (this will not usually be less than 4 weeks or more than 6 months)
- a review date, and
- any support, including any training that the line manager will provide to assist the employee.

The employee should be informed that the agreement represents the first stage of a formal procedure and is equivalent to a first written warning/improvement note and that failure to improve could lead to a final written warning/improvement note and, ultimately, dismissal. A copy of the note should be kept and used as the basis for monitoring and reviewing performance over a specified period (e.g. six months).

It is essential that any agreed support mechanisms are arranged and put in place as soon as possible.

Stage 2

If performance does not improve within the agreed timescales, despite support mechanisms being put in place (if appropriate) or where the issue is too serious to be dealt with by a Stage 1 meeting, the line manager will meet with the employee to discuss the issues. Again, the employee must be informed in writing of the date, time and location of the meeting, the right to be accompanied the procedure to be followed and sufficient information about the performance concerns and its possible consequences to enable an employee to prepare, including performance management records, complaints and any other relevant documents.

The same process as in Stage 1 should be followed but if it is decided that a final development and support agreement is to be issued to the employee, s/he must be advised that if his/her performance does not improve within the agreed timescale then dismissal or other actions may be considered.

See paragraph 6 Actions and Support for the range of options which may be considered as a result of this meeting.

Stage 3

Unfortunately, there will be cases where the employee's performance does not improve or where the issue is so serious that it is not appropriate for it to be dealt with at Stage 1 or 2 of this procedure, and where ultimately dismissal or other actions may have to be considered.

Before this action is considered the Director of the department and the Assistant Chief Executive (People Management) or his/her nominated representatives will review the employee's performance records and any action taken to date and meet with the employee to discuss this and to decide on the appropriate action.

As in Stages 1 and 2, a formal meeting with the employee must be set up and s/he must be informed in writing of the date, time and location of the meeting, the right to be accompanied the procedure to be followed and sufficient information about the performance concerns and its possible consequences to enable an employee to prepare, including performance management records, complaints and any other relevant documents.

At the meeting, the employee must be given the opportunity to respond to all the issues raised and to explain any failure to improve and mitigating circumstances.

The Director and Assistant Chief Executive (People Management) or their nominated representatives must consider all the evidence, support provided to the employee, reasonableness of any action and timescales and the case put forward by the employee before coming to a decision regarding his/her continuing employment with the Authority.

This decision does not have to be made immediately and the meeting may need to be adjourned to consider the evidence submitted by the employee and appropriate actions. However, the outcome of the meeting must be communicated in writing within two calendar days of the meeting. This time limit can be extended by mutual agreement.

If it is decided that:

- a) performance has not improved to the required standard in spite of the employee being given appropriate support, or
- b) where the procedure has been invoked at Stage 3 and where serious performance issues have been substantiated then dismissal or another penalty will be considered. (Advice must be sought from the PM HR Team before imposing any of these penalties) As an alternative to dismissal (where appropriate), departments are advised to consider issuing a final development and support plan in conjunction with other penalties and impose what is considered to be reasonable under the circumstances.

Other penalties include:

- a) Demotion (permanent and temporary) – if temporary the period of demotion must be set out in the letter to the employee

- b) Reduction in salary (permanent and temporary) -. If temporary the period of reduction must be set out in the letter to the employee
- c) Transfer to another job or department.

This decision and the reasons for it will be communicated to the employee in writing within 2 calendar days of the Stage 3 meeting.

A decision to dismiss should not be based on an expired agreement but the fact there is an expired agreement can be a factor for determining why a lesser sanction is not considered reasonable.

6. Actions and Support

The aim of this policy is to support the employee to improve or to remain in the employment of the Authority. Options to consider include:

- **Training.** This may be appropriate in cases where the employee's role has changed or if new statutory requirements or legislation impact on the role for which no training or coaching has previously been provided.
- **Counselling.** The employee may indicate that personal problems are impacting on his/her work performance.
- **Referral to Occupational Health.** Should be considered if the employee's health is impacting on his/her ability to perform at the required level.
- **Review of job profile and workload.** This may be appropriate if it is apparent that the job has changed and/or the workload has increased to the extent that it is not manageable.
- **Referring the issue to the disciplinary procedure.** It may become apparent that the employee has been negligent or is refusing to work to the required standard.
- **Redeployment.** Should only be considered as a last resort if it is agreed that the employee is no longer able to carry out his/her current role and would benefit from moving to a different or less responsible role.
- **Making adjustments to the job.** This should be considered if the employee is unable to undertake the full range of duties as a result of health or disability. In these cases, the employee should be referred to Occupational Health before determining a course of action.

Please refer to the PM HR Team for advice

7. Failure to attend a meeting

There may be occasions when an employee is unable or unwilling to attend a meeting as part of the capability investigation or formal process, e.g. illness. Before proceeding with the meeting the line manager should consider the following:

- medical opinion on whether the employee is fit to attend the meeting
- the seriousness of the capability issue under consideration
- the employee's performance record (including current development and support plan's), general work record, work experience, position and length of service

- the rules relating to conduct, behaviour and attendance outlined in the Introduction at paragraph 1.

Where an employee continues to be unavailable to attend a meeting the Authority may conclude that a decision will be made on the evidence available. The employee will be informed where this is the case

8. Grievances raised during a capability case

If, in the course of this process, an employee raises a grievance, which is related to the case, the Head of Service or Departmental Director must consider whether it is appropriate to temporarily suspend the capability process in order to deal with the grievance. Where the capability and grievance cases are related it may be appropriate to deal with both concurrently. The suspension should not be unnecessarily protracted and should allow for the grievance to be dealt with as quickly as possible. Advice should be sought from the PM HR Team and reference made to the ACAS Guide.

9. Trade Union Officials

If “capability” action is being considered against an employee who is a trade union official the normal capability procedure will be followed. The line manager must seek advice at an early stage from the PM HR Team in such instances.

10. Time Limits for Development and Support Agreements

Development and Support Agreements will be retained on the personal file but will be disregarded for future “capability” purposes after 12 months.

However there may be occasions when the employee’s performance is satisfactory throughout the period of agreement only to lapse soon thereafter. Where a pattern emerges and/or there is evidence of abuse, the employee’s performance record should be borne in mind in deciding how long an agreement should last.

11. Appeals

An employee has the right of appeal against action instigated under the formal stages of this procedure, on the following grounds:

If s/he thinks the conclusion and/or penalty is unfair or unreasonable in the circumstances

If s/he considers that the support offered is inadequate or inappropriate

New evidence comes to light which could have affected the outcome of the performance management meeting

Failure to follow procedures.

For Stages 1 and 2, the appeal should be made in writing (wherever possible) within 14 calendar days, to the Head of Service who will make the necessary arrangements to hear the appeal. The letter should outline the detailed reasons for appeal. The Head of Service may nominate a suitable representative to hear the appeal.

For Stage 3, the appeal should be made in writing (where possible) to the Assistant Chief Executive (People Management) who will arrange for the appeal to be heard by the Staff Appeals Panel.

Appeals will be acknowledged within 14 calendar days.

Employees who need support when submitting an appeal should contact the PM HR Team or Trade Union representative.

The Appeal Hearing and decision is final and there is no further right of appeal within the Council.

12. Keeping Records

Written records must be kept throughout the process, including:

- the performance concerns raised with the employee
- the information or evidence provided by the employee
- the performance improvement/support agreement
- the reasons for actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the capability procedure, and
- subsequent developments
- a copy of all correspondence relating to the capability investigation, meetings and appeal process, and
- copies of any formal meetings.

Records should be retained on the employee's personal file.

Records should be treated as confidential and kept in accordance with the principles of the Data Protection legislation.

If an employee is represented by a Trade Union representative or official, or work colleague, copies of capability meeting notices, meeting notes, response letter, etc. will be sent to that person, unless the employee advises otherwise, in writing.

13. Training and Support

All Trade Union reps, Officers and Councillors involved in this process should receive appropriate support and/or training. Contact the PM HR Team for further information.

14. Monitoring this Policy and Procedure

The application of this policy and procedure will be monitored by PM HR Team.

15. Ensuring Equality of Treatment

All employees are required to adopt a positive, open and fair approach and ensure the Authority's Equality and Diversity Policy is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this policy and procedure.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the PMP HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly.

If you require this publication in an alternative format please contact People Management on Ext 6184 or email

PMBusinessSupportUnit@carmarthenshire.gov.uk