



# Capability Policy

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## 1. Policy Statement

- 1.1. The City and County of Swansea is committed to delivering effective and efficient services for the residents of Swansea and staff. Performance management, motivation and development of Council employees will be integral to achieving this.
- 1.2. The Council aims to build an organisation that is committed to excellent standards of work through the capability and performance of our employees.
- 1.3. This will be achieved by promoting the well being and morale of employees, setting and applying standards of work. To ensure maximum effectiveness, standard setting must be done openly, fairly and consistently, providing appropriate training and support and dealing with capability issues in a fair, objective and reasonable way.

- 1.4. All of the above is based on the starting point that poor performance is not acceptable to the Council.
- 1.5. The Capability Policy is not a substitute for effective and supportive day-to-day line management of performance and capability issues. Nor should such issues be allowed to accumulate, unresolved, until recourse to the policy and procedure becomes inevitable. Instead, it is expected that managers will identify and resolve issues at the earliest possible stage. Managers must be effectively trained to address capability issues appropriately.

## 2. Scope

- 2.1. This policy and procedure applies to all employees of the Council other than those in educational establishments with delegated powers.

## 3. What is capability?

- 3.1. Section 98(3) of the Employment Rights Act 1996 defines "capability" as the ability of a member of staff to perform required work to an acceptable standard by reference to skill, aptitude, health or any other physical or mental quality.
- 3.2. Issues of Health Capability are not included in this policy and are covered by the [Management of Absence Policy](#). All other capability factors outlined above will be dealt with under this procedure.
- 3.3. It is important that the difference between **capability** and **misconduct** is understood.
- 3.4. **Capability** issues can be defined as the situation where, despite having received training, encouragement or warnings, no significant difference to work performance results. It is then assumed that the employee does not have the **ability** to achieve the required standard however hard he/she tries.
- 3.5. Examples of capability issues include:-
  - adequacy of skills and/or knowledge;
  - professional insight or judgment;
  - ability to manage reasonable workloads;
  - ability to work to identified standards;
  - ability to identify and work towards appropriate priorities.

- 3.6. In a case of misconduct an employee could do better but will not or fails to perform due to his/her own carelessness, negligence or unwillingness. Cases of misconduct will be dealt with through the [Disciplinary Policy](#).
- 3.7. The fundamental distinction between capability and misconduct may be expressed simply as "can't do" as opposed to "won't do". The latter implies that the employee has some degree of control, deliberation and/or choice in the matter.
- 3.8. This policy is not to be used when an employee is still in their probationary period. The [Probation Policy](#) would apply in those circumstances.
- 3.9. Whilst every effort will be made to enable an employee to improve their performance and retain them in post, the Council cannot guarantee to maintain employment if reasonable and appropriate performance is not achieved following the exhaustion of the Capability Policy.

## 4. Employees obligations

- 4.1. All employees have a responsibility to:
  - take full accountability for their own performance and behaviour
  - perform to a satisfactory level in line with the Council's objectives taking into account and actioning agreed personal development needs
  - to contribute to and engage actively in appraisals, one to one meetings and objective setting, problem solving, review and evaluation
  - to work with managers constructively to address any underlying issues which may be affecting performance
  - to move forward their learning and development by taking ownership for their personal development
  - be open to constructive feedback
- 4.2. It is reasonable to expect that the employee will take whatever steps he/she can to manage his/her personal circumstances and to minimise any impact on his/her work.

## 5. Managers Responsibilities

- 5.1. Managers will appreciate that the purpose of this policy is to manage capability and to assist employees to reach acceptable standards of performance. Regular meetings will enable a manager to identify issues at an early stage.
- 5.2. Managers must ensure the Council's [Training and Development Policy](#) is utilised fully to ensure that capability issues are addressed.
- 5.3. In order to effectively implement this policy, managers must:
- 5.4. Monitor the performance of staff and ensure Performance Appraisal and Development Reviews (PARD) and supervision/one-to-one meetings are carried out on a regular basis in order to identify any problems or issues.

- 5.4. Try to identify and rectify any issues as early as possible with the aim of avoiding the formal action route if possible. This will include assessment of training needs to meet the specific job requirements.
- 5.5. Ensure that all employees are aware of the standards of performance that are expected of them.
- 5.6. Be prepared and ready to have difficult conversations with their team members.
- 5.7. Be encouraging and supportive in all conversations, but particularly where concerns are identified.
- 5.8. Set realistic and measurable standards of performance for the job.
- 5.9. Ensure that all issues are dealt with in a reasonable, timely and constructive manner and that employees are kept informed of what action will be taken if they fail to meet these standards.
- 5.10. Be mindful of the implications of employment legislation such as the Equality Act 2010 and the Council's [Equality Policy Statement](#).
- 5.11. Make line managers and supervisors aware that there might be instances when they will need to speak informally with an employee about their performance, at the time that it comes to light. Line managers/Supervisors should keep a [note](#) to this effect and provide a copy to the employee. This informal approach is important so employees are made aware of any problems at the earliest opportunity and given an early chance to improve.

## 6. Stages of the policy

- 6.1. Capability is to be managed through the following stages:-
  - Employee Performance Management, i.e. Performance Appraisal and Development Reviews (PADR)/Supervision
  - [Informal Stage](#)
  - [Formal Stage \(i.e. first and second formal stages\)](#)
  - [Final Formal Stage](#)
- 6.2. During the formal stage, there are 2 levels of written warnings that may be issued to an employee. The levels of warning are as followed:
  - Formal stage warning to remain on file for 6 months
  - Final Formal stage warning to remain on file for 12 months
- 6.3. The Council reserves the right to seek assistance from internal or external facilitators at any stage of this procedure in the interest of seeking a satisfactory and objective outcome for all.

- 6.4. In exceptional cases where a single performance error has serious consequences (e.g. where it results or could result in the serious jeopardy of the health and safety of service users or employees) the principles in this policy may be disapplied. In these circumstances, the matter may be dealt with as potential misconduct or gross misconduct under the [Disciplinary Policy](#).

## **7. Non Attendance of Employee at Hearings**

- 7.1. Whilst every opportunity will be given for the employee to attend all meetings and appeal hearings, unless there are extenuating circumstances, the non attendance of the employee will not invalidate the proceedings, and they may proceed if considered appropriate or be reconvened at another date and time.

## **8. Managing Employee Performance**

- 8.1 Any issues or causes for concern should be dealt with as soon as they are identified. These should then be picked up through Performance Appraisal and Development Reviews (PADR) to make sure that improvements have been made. Managers should always address capability issues at the time they arise in normal circumstances.
- 8.2 As soon as is reasonably practicable after an issue or cause for concern is identified, the Line Manager must speak to the employee about the issue and try to resolve it through conducting a PADR. PADR's can be conducted at any time during the Employee Performance Management Cycle. The Council has a structured Employee Performance Management policy which should be followed and be referred to. The Performance Appraisal and Development Review, which is a part of the Employee Performance Management process, is not the appropriate forum in which to raise concerns for the first time.
- 8.1. All paperwork supporting the Employee Performance Management Process, such as forms, supervision or one to one notes etc, can be referred to as evidence of both a history of problems or of an exemplary work record.
- 8.2. If an employee fails to perform to the required standard, the matter should be investigated to ascertain the reason for poor performance and a review period should be set.
- 8.3. If an employee's performance has not improved within a reasonable period, then the informal stage of the Policy will be invoked.

## **9. Informal stage**

- 9.1. When a manager has not been able to resolve a performance issue through normal line management action or the employee performance management process, the informal procedure for managing capability issues should be followed.

9.2. Managers need to establish, as specifically as possible, what the performance gap is. For example:-

- failure to meet standards of performance as set out in the job description or other documents;
- failure to meet timescales for the completion of work;
- delivery of work that differs from that specified;
- unreasonably lower output than normal.
- unreasonably high error rates.
- inability to recognise and address key issues and priorities.

9.3. Managers then need to look into the background and pose the following questions:-

- Are there any obvious explanations related to the work environment? For example: changes in work practices; new equipment; new expectations; higher levels of demand.
- Is anything known about the employee, or their personal circumstances that may help to explain the performance problem?

<b>REASON</b>	<b>ACTION</b>
External factor	Determine nature of factor and where appropriate, offer support such as pastoral support, <a href="#">Helping Hands</a> or referral to <a href="#">stress counselling</a> .
Lack of required skills	Where practicable, assistance through training, coaching, monitoring of performance and reasonable time to reach required standards.
Sickness	To be dealt with under the <a href="#">Management of Absence Policy</a> .
Disability	The needs of a disabled employee should be assessed and met prior to setting performance targets. Appropriate advice will be sought and any reasonable adjustments which may mitigate potential difficulties are put in place. The provisions contained in the Equality Act 2010 and the Council's <a href="#">Equality Policy Statement</a> should also be taken into account.
Deliberate action / omission, negligence or lack of Application	To be dealt with under the <a href="#">Disciplinary Policy</a> .
Bullying or Harassment	The <a href="#">Harassment and Bullying Policy</a> should be invoked before continuing with the capability procedure.

9.4. Managers should arrange to meet with the employee informally and approach discussion openly. Both parties should jointly explore the reasons behind the underachievement and seek solutions.

- 9.5. The following questions must be asked:
- Does the employee understand the expectations placed on him/her?
  - Are these reasonable?
  - Is sufficient managerial guidance or support being made available?
  - Is there a resource issue?
  - Has appropriate training been given?
  - Are there underlying health or personal problems?
- 9.6. The manager and employee should agree the reasons causing the performance problem(s) and agree a course of action to address.
- 9.7. A time scale should be implemented for these actions and a review date set.
- 9.8. This should normally be one calendar month (this may be extended if the employee / manager is on holiday or sickness absence).
- 9.9. Managers will discuss the possible consequences with the employee if no improvement is made.
- 9.10. Managers should document the performance issues raised and record the decisions for improvement in an action plan. The employee must also be provided with a copy. The action plan should state clearly:-
- the specific improvement required;
  - any targets to be met;
  - the timetable for improvement;
  - the support or training to be received / provided to achieve the targets;
  - anything else the Manager may need to do to facilitate an improvement in performance e.g. provision of resource;
  - the review date and any interim meetings.
- 9.11. At the end of the set review period the manager should meet again with the employee to provide feedback on progress and improvement.
- 9.12. Managers should inform their relevant Human Resources Officer. Employees should be offered the opportunity to be accompanied at the interview by a trade union official or a fellow employee. The accompanying employee must not be a relative. This will be for the employee to arrange and should not impede the process. Meetings should normally only be re-arranged once. If the employee fails to attend a rearranged meeting it may proceed in their absence.
- 9.13. If it is evident that there has been an acceptable improvement in performance then this should be clearly acknowledged and the employee reminded of the need to maintain the improvement. The informal review procedure is then complete.
- 9.14. If significant improvement has been made but the required standard has not yet been achieved or mitigating circumstances are identified, the review period may be extended and continuing support provided. At the end of the extended review period the manager and employee will meet again and if there has

been an acceptable improvement, this should be acknowledged and the employee reminded of the need to maintain the improvement. The informal procedure is then complete.

- 9.15. If there has been no marked improvement after the agreed review period, the formal procedure should be invoked and the employee informed of this in writing.
- 9.16. If the informal process has been properly followed, the employee has no right of appeal against a decision to move to the formal stage.
- 9.17. Managers must retain copies of the action plan, record the outcomes of meetings and reviews, and provide copies to the employee.

## **10. First formal stage**

- 10.1. Where performance remains unsatisfactory and the employee fails to reach the required standards through the informal stages, the Line Manager must interview the employee to:
  - discuss the relevant issues and any concerns about performance, and
  - advise them of the required standard of work / performance expected of them.
- 10.2. The employee must be given seven working days' notice of the meeting. A letter will be sent by Human Resources offering the employee the opportunity to be accompanied at the interview by a trade union official or a fellow employee. The accompanying employee must not be a relative. This will be for the employee to arrange and should not impede the process. Meetings should normally only be re-arranged once. If the employee fails to attend a rearranged meeting it may proceed in their absence.
- 10.3. A Human Resources Officer will be present at all the formal meetings to advise the Line Manager and during the meeting the Line Manager should:
  - Give example(s) of under performance
  - Determine how long it has been occurring
  - Discuss and explain the required standard
  - Consider the employees reasons and investigate any problems the employee is having
  - Offer appropriate training, support and guidance
  - Explain how under performance affects the section, team etc.
  - Set a timescale for improvement
  - Warn the employee of the action to be taken if they do not meet and maintain the standard i.e. progressing this procedure, and that their employment could ultimately end if the required standard is not met;
  - If considered appropriate, explore the possibility of alternative work/duties throughout the Council, if available and mutually agreeable.



- 10.4. The employee will be given every opportunity to put forward any mitigating circumstances and managers should encourage employees to do so.
- 10.5. If it is justifiable to do so, a first formal stage warning will be issued and a letter will be sent by Human Resources to the employee confirming this within 7 working days of the meeting. This warning will remain on the employees file for 6 months.
- 10.6. A warning will be appropriate where despite supportive measures being put in place; the employee fails to reach satisfactory levels of performance and / or targets.
- 10.7. A warning would not be appropriate in cases where the employee is clearly making a conscious effort to improve, and despite performance not being at the required level at that point, it is clear it will be reached at a future time and so an extended review date is required to monitor the individual.
- 10.8. The manager must record the reasons for issuing or not issuing a warning and a letter will be sent by Human Resources to the employee to advise them of the outcome.
- 10.9. The employee has no right of appeal against a decision to issue a first formal stage warning unless in exceptional circumstances the procedure has not been followed correctly. In these circumstances Human Resources will undertake a case review, their decision will be final.

## **11. Second Formal Stage**

- 11.1. During the 6 month warning period the Line Manager must continually monitor the employee's performance and hold regular fortnightly progress meetings with the employee. Any appropriate mechanisms to improve performance should be put in place as necessary.
- 11.2. In addition to the regular progress meetings, a 'formal review meeting' will also take place.
- 11.3. The date on which the 'formal review meeting' is held will depend on the level of the employee's progress. It is not necessary to wait until later in the process if the employee is not making satisfactory progress immediately, but it will be unusual to hold a formal review meeting within the first month after the warning is issued. The trigger for a formal review meeting will be one of the following:
  - 11.4. If the employee is
    - not meeting performance targets,
    - improvement continues to be unsatisfactory and
    - it is felt necessary to progress to the next stage of the process

- 11.5. If the employee is meeting targets and performing satisfactorily and it is not felt that progression to the next stage of the process is necessary, the formal review meeting will normally take place one month before the expiry of live warning.
- 11.6. The employee must be given seven working days' notice of the formal review meeting. The letter, written by Human Resources, will offer the employee the opportunity to be accompanied at the interview by a trade union official or a fellow employee. The accompanying employee must not be a relative. This will be for them to arrange and should not impede the process. Meetings should normally only be re-arranged once. If the employee fails to attend a rearranged meeting it may proceed in their absence.
- 11.7. If at the time of the review meeting, the employee's progress is judged by the Line Manager to have reached the appropriate standard, the employee will be informed that the required standards have been met and that no further action will be taken. It should be stressed that the decision to take no further action is conditional upon the employee maintaining the standard consistently. Human Resources will send a letter to this effect to the employee within seven working days.
- 11.8. However, if, at the time of the review meeting, the employee's standard of performance is still considered inadequate, the Line Manager should:
- Give example(s) of under performance
  - Set out how long it has been occurring
  - Discuss and reiterate the required standard
  - Consider the employees reasons and investigate any problems the employee is having
  - Offer appropriate training, support and guidance
  - Explain how under performance affects the section, team etc.
  - Set a timescale for improvement
  - Explore the option of redeployment, if appropriate
  - Warn the employee of the action to be taken if they do not meet and maintain the standard i.e. progressing this procedure, and that their employment could ultimately end if the required standard is not met;
  - If considered appropriate, explore the possibility of alternative work/duties throughout the Council, if available and mutually agreeable.
- 11.9. If following this discussion, the line manager, in consultation with Human Resources, considers the employees explanation to be unsatisfactory, the employee will be issued with a second stage formal warning where it is justified to do so. This warning will remain on the employees file for 12 months.
- 11.10. This should be confirmed to the employee in writing by Human Resources.
- 11.11. The employee must be made aware that if improvement is not considered to be satisfactory at any point during this warning period, that a further meeting may be held which could ultimately result in dismissal from the Council.

11.12. The employee has no right of appeal against a decision to issue a second formal stage warning unless in exceptional circumstances the procedure has not been followed correctly. In these circumstances Human Resources will undertake a case review, their decision will be final.

## **12. Managing an employee with a second formal warning**

- 12.1. During the 12 month live warning period, the Line Manager will continually monitor the employee and hold regular weekly progress meetings for the first month and then as agreed by the manager as appropriate to the particular circumstances.
- 12.2. If it is found that the employee's standard of performance remains inadequate and there is no reasonable explanation the Manager in consultation with Human Resources, may proceed to the Final Stage of the Policy where this is justified.
- 12.3. This may occur at any point during the 12 month warning period. It would be unusual hold a formal review meeting within the first month after the warning has been issued.
- 12.4. If the employee's performance improves to a satisfactory level during the warning period and dismissal is at no point considered necessary or justified, the employee will be invited to a formal review meeting as set out in sections 10 and 11. This will take place one month before the expiration of the second formal warning.
- 12.5. At the meeting the line manager should clearly acknowledge the progress and the employee reminded of the need to maintain the improvement. This outcome will be notified to the employee in writing.

## **13. Final formal stage - Termination of Employment**

- 13.1. Where it is decided to proceed to the final formal stage, Human Resources will send the employee a letter giving seven working days' notice of the final formal stage meeting. The letter will offer the employee the opportunity to be accompanied at the interview by a trade union representative or a fellow employee. The accompanying employee must not be a relative. This will be for the employee to arrange and should not impede the process.
- 13.2. The letter will give the employee the reason for the meeting and will contain sufficient information to enable the employee to know the allegations being made and to allow her / him to prepare for the meeting.
- 13.3. The meeting will be heard by a 'Responsible Officer' who will be a higher level of manager e.g. Head of Service or third tier manager. The Responsible Officer will be accompanied by a Human Resources Officer. The Line Manager will present the case.
- 13.4. The full nature of the issues will be presented by the Line Manager to the Responsible officer together with supporting evidence.

- 13.5. The employee and/or his/her companion will have the opportunity to ask any questions of the Responsible Officer.
- 13.6. The Responsible Officer and the Human Resources Officer will be entitled to ask whatever questions they deem appropriate.
- 13.7. The Employee and / or companion will then present their case to the Responsible Officer and Human Resources Officer.
- 13.8. The employee may be questioned on any aspects of his/her stated case and witnesses may be questioned on their evidence by the line manager, the Responsible Officer or the Human Resources Officer.
- 13.9. The line manager officer will then sum up. This should be a summary of the case and may be presented in writing provided that a copy has been given to the employee and their companion.
- 13.10. The employee or companion will then sum up. This should be a summary of the case and may be presented in writing provided that a copy has been given to the line manager.
- 13.11. If, after the meeting, the Responsible Officer decides that, having listened to the employee's explanation and considered any mitigating circumstances, the employee's performance has not improved to the required standard, s/he will firstly consider whether there is a possibility of suitable alternative employment, possibly in a lower graded job if appropriate. There will be no pay protection.
- 13.12. If suitable [alternative employment](#) is found for the employee, the Human Resources Officer will make the appropriate arrangements and deal with any contractual matters.
- 13.13. If alternative employment is not available or is deemed inappropriate, the employee's employment will be terminated on the grounds of capability. This must be communicated to the employee in person, by the third tier manager and/or nominated representative.
- 13.14. The dismissal will take immediate effect and the employee will receive the appropriate pay in lieu of notice net of proper deductions. The decision will be confirmed in writing and the employee should receive this letter within seven working days of the meeting. A copy should be placed on the employee's personal file.
- 13.15. The employee must be informed of their right of appeal against dismissal and this will be confirmed in writing.
- 13.16. The process for appeals can be found in the [Appeals Procedure](#).

13.17. If, after the meeting, the Responsible Officer decides that, having listened to the employee's explanation and considered any mitigating circumstances, the employee's performance to have reached the appropriate standard, the employee will be informed that the required standards have been met and that no further action will be taken. It should be stressed that the decision to take no further action is conditional upon the employee maintaining the standard consistently. Human Resources will send a letter to this effect to the employee within seven working days.

#### **14. Policy Monitoring**

14.1. The Council will monitor the application of this policy and has discretion to review it at any time through the appropriate consultation mechanisms.

14.2. Responsibility for the implementation, monitoring and development of this policy lies with the Head of Human Resources. Day to day operation of the policy is the responsibility of nominated officers who will ensure that this policy is adhered to.

<b>Version Number</b>	<b>Details of Change</b>	<b>Date</b>
2.0	To mirror changes to the Employee Performance Management Policy (see Paragraphs 5.4; 6.1; 8,1 and 8.2)	11 <sup>th</sup> August 2015