

Capability Policy

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Capability Policy and Procedure

Introduction

This policy is to be used when the performance of an employee has been identified as falling below an acceptable standard. The capability policy aims to enable managers to address capability concerns with employees by stating clear standards and providing an improvement plan, so performance can be improved. This policy provides a framework to support the employee to resolve performance concerns in a fair and supportive way. In circumstances where performance does not improve, even with reasonable measures and support from managers, guidance on how to progress with the formal stage of the capability process including the hearing stage and any potential outcomes that may be considered at a capability hearing are outlined below.

This policy applies to all council employees except for teachers and employees working in schools who have their own local management and policies. Capability concerns for agency workers should be addressed through Matrix, the Council's temporary staffing system to inform the locums agency or directly to an alternative agency provider.

Managers should use the [probation policy](#) for employees who are currently on probation and have capability concerns. Managers should refer to the [sickness policy](#) when managing sickness absence during the capability procedure.

1 Principles

The following principles should be followed when dealing with capability concerns:

- Managers are responsible for setting standards and monitoring the progress of performance improvement as soon as performance concerns become apparent. This will include scheduling a meeting with the employee to address the concerns and provide a plan to support the employee. Where an employee has long-term condition or disability, the support plan should also include any reasonable adjustments such as alterations to the workstation and if applicable, using occupational health and/or access to work to offer a guidance for adjustments within the workplace.
- Managers are responsible for ensuring that all employees being managed under the capability policy are informed in writing of the concerns and given an improvement plan with agreed reasonable timeframes for improvement.
- Managers are expected to monitor and review performance regularly and where necessary, progress to a formal procedure if performance improvement has not been made.
- Employees are required to fully engage and work with their manager during the capability process. Refusal to do so could be considered as a conduct issue and will be managed through the disciplinary procedure.

- Employees should ensure they understand what is expected of them in relation to performance improvement and seek clarification where required.
- The Council will make every effort to deal with capability concerns as quickly as possible and at the appropriate management level.
- Any grievances raised during capability procedures will be managed in line with the [Grievance Policy](#) , see section 12 of this policy.
- All employees who are the subject of this procedure have the right to be accompanied at formal meetings (see section 4 of this policy) by a recognised Trade Union representative or work colleague. It is the employee's responsibility to make these arrangements.
- All parties involved in this procedure must ensure that they maintain the confidentiality of the process within and outside the Council.
- All capability records will be treated as confidential and will be kept in line with the data protection guidelines.
- If at any stage within this procedure, it becomes clear that the performance concern relates to misconduct, the matter will be addressed in line with the [Disciplinary Policy](#) and the capability process will cease.
- Prior to implementation of any stage of the formal capability procedure, the line manager will consult and seek advice on formal procedures from the HR Employee Relations Team.
- An employee will have the right to appeal against an outcome imposed under the formal capability procedure. Warnings issued will remain in place pending the outcome of any appeal and to be kept for a reasonable period in line with the GDPR.
- The Council will provide coaching and support related to this policy to all Head of Services, Managers and Supervisors and periodically offer training through formal learning and development training events.

2 Definition of Capability and Reasonable Measures

Capability management is the process of managing performance when the employee is unable to perform at the standard required for the role. Managers should have an informal discussion with the employee when underperformance is identified. It is important to differentiate between misconduct and underperformance to make an informed decision on how to manage the case. Underperformance related to misconduct is linked to behaviour or attitude from the employee towards the duties at work, for example not following instructions or refusing to complete tasks, when asked. Whereas capability is related to the employee not being able to complete a task because of lack of ability, health or external factors that would have a negative impact on how the employee performs at work. When it has been identified as underperformance due to capability, the manager and the employee should put a plan in place to resolve the underperformance such as offering necessary training, flexible working adjustments, refer the employee to Occupational

Health and/or request for the employee to self-refer to Access to Work for further advice and guidance.

2.1 Protected Characteristics

It is important for all council officers to be aware of the protected characteristics and to be able to identify the differences of colleagues at work in line with the legislation. The Equality Act 2010 provides a framework to protect individuals from unfair and discriminatory treatment in and out of the workplace. Being aware of the protected characteristics can help managers in identifying potential barriers at work and provide reasonable adjustments for employees.

The protected characteristics under the Equality Act 2010 are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) and sexual orientation.

2.2 Reasonable Adjustments

Reasonable adjustments are changes or adaptations which help to remove or reduce disadvantages for an employee with a known disability or long-term health condition. It is important to identify what would be a reasonable adjustment for the employee and establish the feasibility of such changes within the workplace. The manager is required to communicate with the employee, discuss with medical professionals such as the Occupational Health team and where necessary, request the employee to apply for a workplace assessment report from Access to Work. This to ensure that, where possible, reasonable adjustments are made in the workplace to enable the employee to do their role up to an acceptable standard. Further guidance on how to manage reasonable adjustments is provided in the [Reasonable Adjustment and Access to Work Guidance](#).

2.3 Occupational Health Referral

If a manager wants to refer an employee to Occupational Health (OH), this must be discussed first with the employee and the manager will need to complete and send an Occupational Health management referral form to the provider.

Employees who have been referred to Occupational Health, have a responsibility to attend the appointment or reschedule the appointment at least 48 hours before the scheduled appointment. The employee needs to prioritise the OH appointment and ensure they allow sufficient time to travel to the appointment. A charge will be incurred for each missed occupational health appointment. Further information on [occupational health referrals](#) can be found on the intranet.

3 Manager's Responsibilities

The line manager should manage any performance concerns in the first instance by:

- Privately talking to the employee and explaining the concerns they are having
- Point out areas that require improvement
- Listen to the employee's point of view and any mitigating circumstances
- Agree on improvements to be made and a reasonable timescale to achieve this (appendix 1 Improvement Plan Guidance and [SMART Objectives setting](#))

- Discuss reasonable adjustments, if needed
- Offer additional training, if needed

The improvement plan must have achievable SMART objectives that the employee and manager are able to discuss and review regularly. For guidance on the SMART objectives and Improvement plan see appendix 1 Improvement Plan Guidance and the [SMART Objectives setting guidance](#) on the intranet. The timescale for monitoring an improvement plan is 1 to 3 months, however if the employee fails to improve, the manager may invite the employee to a second formal meeting before the end of the review period.

At the end of the meeting, the improvement plan should be completed and agreed by the manager and the employee including timescale for the targets to be achieved, which will be considered as a review period. At the end of the review, the manager may decide on the following next steps:

- Progress to the formal capability process
- Take no formal action, monitor informally for up to 12 months

In circumstances where it is identified the issue is conduct rather than capability, the manager will manage this concern under the disciplinary policy. This is assessed on a case-by-case basis and managers should consult with the HR Employee Relations Team before making the decision. The manager must communicate all agreed outcomes verbally to the employee during the meeting. The manager should also take notes of the conversation and agreed actions, this should be included in the supervision notes or in a separate email/ letter following the outcome of the meeting. The supervision meeting should continue regularly to monitor the employee's progress.

Appendix 2 outlines what managers should also consider as part of the capability procedure.

4 Right To Be Accompanied

The employee has the statutory right to be accompanied at any formal stage of a capability process, they may be accompanied by a work colleague, a Trade Union representative or an official employed by a Trade Union.

For the informal capability processes, the employee does not have the right to be accompanied but may be accompanied by a work colleague for support. Legal representation is not appropriate or allowed for the capability process.

5 Standard Setting

Capability concerns may be resolved through day-to-day management interventions, this is part of the informal process. The line manager should take every opportunity to promptly raise concerns informally by discussing with the employee to establish the reasons for underperformance. It is important for managers to keep notes of meetings where such discussions have taken place and share a summary with the employee. By providing examples of where performance has been unsatisfactory it helps to clarify the standard required for performance and manage any challenges that the employee may be facing at work.

If it is identified that the performance concern is related to the employee's personal life, the manager should encourage the employee to contact the Employee Assistance Programme and agree on a timescale with the employee in which expected performance will be restored and provide reasonable adjustments such as flexible working, where appropriate.

5.1 Outcome of the standard-setting meeting

The employee should be given sufficient time to demonstrate performance improvement. The manager should confirm the agreed outcomes of any discussions in writing to the employee; a form should be obtained from the HR Employee Relations team. The improvement plan should include measurable objectives, expectations and timescales for review. The timescale for the standard setting is a minimum of 1 month and a maximum of 3 months before proceeding with the formal capability process.

5.2 Regular meetings

Managers are required to have regular supervision meetings with the employee during the standard setting stage and formal stages of the capability process. The recommendation is weekly supervision meetings within the 1 to 3 months timeframe depending on the nature of the work and the requirements.

At the end of the standard setting, managers must schedule a meeting to discuss progress and next steps. The manager may progress to the formal stage earlier than expected if the employee has not achieved their performance requirement during the review period or do so if the employee does not maintain their performance within 12 months after the capability standard has been achieved. The manager must keep all the written notes and documentation of all the meetings they have with the employee and provide copies to the employee of what has been agreed.

If the employee's performance has improved to the standard required, then this period of regular performance monitoring will end.

Should the employee's performance fail to improve after reasonable support and adjustments (if needed) are made, the manager will notify the employee during supervision meeting that the capability process will move to the formal stage and invite the employee for a first formal capability meeting with a minimum of **5 working days** notice.

5.3 Underperformance due to misconduct

If it becomes apparent that the performance concern is conduct-related issue rather than capability, the manager should refer to the [Disciplinary Policy](#) and start the preliminary investigation before proceeding with the formal disciplinary process. Managers are recommended to check the [code of conduct](#) for behaviours and actions that would be managed under the Disciplinary Policy instead of Capability.

6 Formal Capability Process

6.1 First Formal Meeting

If the employee has not improved their performance after the standard setting meeting, the next step would be to invite the employee to a first formal meeting with **5 working days** notice. The invitation letter must include what was agreed during the standard setting meeting, what was not achieved, the reason for the first formal meeting and the right to bring a representative. The employee can provide evidence or documents they wish to refer to in the meeting, which must be provided at least **2 working days** before the meeting.

The meeting will only be postponed once for exceptional circumstances such as illness or another emergency. The meeting should be scheduled for a suitable day that the employee is able to attend with a Trade Union representative or a work colleague. The manager must schedule an alternative date for the meeting as soon as practically possible. If the employee fails to attend, the meeting may be held in their absence and the outcome confirmed to them in writing.

During this meeting, the manager will outline the areas of concern/underperformance, the improvement plan, any support and reasonable adjustments provided in the standard setting stage. The manager will inform the employee why they do not feel performance has reached an acceptable standard. The employee and their representative will have the opportunity to respond and outline any contributing reasons.

During this meeting, the manager should discuss the following:

- Notes from the standard-setting meeting and what was not achieved
- Identify the causes of continuing poor performance and if any further support can be provided
- Targets and what needs to be achieved or improved
- If there is any, the impact the underperformance has on the service and other colleagues
- Reasonable adjustments
- Setting review periods for the employee to reach the required standard
- Considering redeployment for employees with permanent medical conditions, in consultation with Occupational Health
- The employee should be made aware of possible outcomes if they fail to achieve and maintain the required standards.

6.2 Outcome of First Formal Meeting

During the meeting, the manager will consider whether the employee has made improvements in the areas set out within the standard setting meeting, taking into account any support or reasonable adjustments which have been made.

The manager will review progress and decide whether the performance has improved sufficiently to be taken out of the formal capability process, or where there has not been sufficient improvement, the formal capability process will continue.

The manager must complete the meeting template document, which can be obtained from the HR Employee Relations team, and a copy be provided to the employee and HR.

In the event the formal capability process continues, the manager will agree a further review period. During the review period, the manager is required to have regular meetings with the employee to review performance and provide regular feedback, this should be completed weekly. At the end of the review period, the manager must review performance and decide if they will proceed with the second formal meeting or conclude the capability process, depending on whether performance has reached the required standard. However, If the employee continues to underperform during the review period, the manager, in consultation with the HR Employee Relations team, can invite the employee for a second formal meeting before the end of the review period. The employee will be invited to a second formal meeting with a minimum of **5 days'** notice.

If the case closes after the review period due to the employee improving their performance, they will be monitored for 12 months and if their performance falls below the standard required, they will be invited to a second formal meeting.

6.3 Second Formal Meeting

If the manager decides to proceed with the second formal meeting, they will inform the employee during the supervision meeting and send out the invite for the meeting. The invitation letter must include what was agreed during the first formal meeting, what was not achieved, the reason for the second formal meeting and the right to bring a representative. The employee can provide evidence or documents they wish to refer to in the meeting at **least 2 working days before** the meeting. A member of the HR Employee Relations team will attend this meeting, and the employee has the right to be accompanied.

During second formal meeting, the manager will provide feedback on what was agreed in the first formal stage and why the employee has been invited to a second formal meeting. The employee and their representative will have the opportunity to comment on any feedback given by the manager and discuss any challenges, support and training needed to support the employee's performance improvement.

During the second formal meeting, the manager will discuss the following:

- The previous plan and targets
- What was not achieved
- Setting review periods for the employee to reach the required standard
- What, if any, impact the underperformance has on the service and other colleagues
- Consider redeployment for employees with permanent medical conditions, in consultation with Occupational Health.
- Further reasonable adjustments, if needed
- The employee should be made aware of possible outcomes if they fail to achieve and maintain the required standards.

The timescale for monitoring an improvement plan is a minimum of 2 weeks and wouldn't be expected to last longer than 6 weeks, however if the employee fails to improve, the manager may invite the employee to a capability hearing before the end of the review period.

This meeting must be prioritised by the employee, and the second capability meeting will only be rescheduled once for exceptional circumstances such as illness or another emergency. The second formal meeting should be scheduled for a suitable day that the employee is able to attend with a Trade Union representative or a work colleague. If the employee requests to reschedule the meeting, the manager must give an alternative date as soon as practically possible.

6.4 Outcome of the Second Formal Meeting

During the meeting, the manager will consider whether the employee has made improvements in the areas set out within the standard setting meeting, taking in to account any support or reasonable adjustments which have been made.

The manager will review progress and decide whether the performance has improved sufficiently to be taken out of the formal capability process, or where there has not been sufficient improvement, the formal capability process will continue.

The manager must complete the meeting template document, which can be obtained from the HR Employee Relations team, and a copy be provided to the employee and HR.

During the review period, the manager is required to have regular meetings with the employee to review performance and provide regular feedback, this should be completed weekly. At the end of the review period, the manager must review performance and decide if they will proceed with the capability hearing or conclude the capability process, depending on whether performance has reached the required standard. However, If the employee continues to underperform during the second review period, the manager, in consultation with the HR Employee Relations team, can invite the employee for a capability hearing before the end of the review period.

If the case closes after the review period due to the employee improving their performance, they will be monitored for 12 months and if their performance falls below the standard required during that period, they will be invited to a capability hearing.

7 Formal Capability Hearing

In the event that an employee fails to make sufficient improvement after the second capability hearing, they will be invited to attend a final, formal capability hearing.

7.1 Invitation to Hearing

The employee will be informed verbally during the supervision meeting and notified in writing of the date of the Capability Hearing. The invitation will be sent at least **5 working days** before the hearing date.

The invitation will include:

- Date, time and location of the hearing
- Details of who will be attending the hearing
- Details of the performance concerns
- Details of the first formal and second formal stage
- Any reasonable adjustments given by the manager
- Any workplace assessments including work desk assessment, access to work report, occupational health reports, any other assessments the manager has completed or actioned on
- Information on the deadline for the employee to submit any documentation to support their capability case
- Information on how the employee can inform the Chair of any reasonable adjustment required on the day of the hearing
- Information on the employee assistance services that the employee can access for additional support

A member of the HR Employee Relations team will be present at the hearing. The manager chairing the formal capability hearing must be senior to the manager who carried out the first and second formal meeting. The capability hearing must be chaired by an Assistant Director if one of the potential outcomes of the hearing is dismissal. The employee will be invited to submit evidence and/or written statements to the HR Employee Relations Team at least **2 working days** before the Capability hearing.

7.2 Hearing Format, including Reasonable Adjustments & Virtual Hearings

The Hearing is attended by the Chair, the employee, their representative, the manager, and a member of the Employee Relations Team.

The hearing will be conducted in line with the Council's Capability Hearing Procedure, which consists of the following steps:

- The manager will present the capability case and the documents related to it.
- The employee and their representative will have an opportunity to ask questions.
- The employee will be allowed to set out their case, present documents related to the capability case to support their case and answer any questions from the manager and hearing officer in order.

The Chair needs to ensure that there are reasonable adjustments for all parties attending the hearing. All parties attending the hearing must inform the Chair or the Employee Relations Specialist of any reasonable adjustments needed a minimum of **3 working days** before the hearing is to take place.

The Council's standard approach to capability hearings is to conduct all hearings in person. However, if the employee has any exceptional circumstances that would be beneficial to conduct the hearing virtually then all requests must be submitted to the Chair a **minimum of 3 working days** before the hearing date. The employee must explain the mitigating circumstances and the difficulties with attending the hearing in person. The Chair will consider whether it is reasonable to change the location of the Hearing or decide to conduct it virtually. The decision will be given to the employee as soon as possible but within a reasonable timeframe to be able to continue with the original date.

7.3 Rearranging Hearings

If an employee and/or their Trade Union representative are unable to attend the Hearing or if there is an emergency, the employee must inform the Chair with the reason they cannot attend at least **1 day before the hearing or on the same day** in case of an emergency so an alternative date can be given.

The hearing can only be rescheduled once, and it is important for the employee to prioritise the date scheduled. It is advisable to consider the availability of the employee and their representative to ensure fairness in the process and for the new hearing date to be rescheduled as soon as practically possible. If the employee is off sick, the Chair may pause the Capability Hearing until the employee returns to work. However, If an employee is on long-term sick leave, the capability process will be put on hold, sickness management will begin, and the employee will be managed under the sickness policy instead.

If the employee is refusing to attend, then the Chair has the right to review all the documentation presented and make a reasonable decision in the employee's absence. In exceptional circumstances. With prior employee consent the Trade Union representative may act on behalf of the employee during the hearing.

7.4 Recordings & Reviews

The Council has the right to record the capability hearing to ensure the accuracy of the Hearing notes. The recording device used for capability hearings is a voice recorder and it will only capture the voices in the Hearing. A copy of the transcript will be available to the employee and a copy will be kept securely on the casework file.

If the employee wishes not to have the Capability Hearing recorded, then a written request must be submitted to the Chair at least **2 working days** before the hearing to give reasonable amount of time for the Chair to allocate a note taker. If the hearing is conducted virtually then the manager can use a voice recorder which will be provided by the Employee Relations Specialist or alternatively a note taker can be allocated. This also applies to hybrid meetings where a manager

can use a voice recorder or allocate a note taker.

If the employee wishes to review the recording from the Capability Hearing, then the employee with their representative can review the recording of the Hearing from any Council Building. This recording cannot be copied or recorded with another device such as a phone. A member of the HR Employee Relations Team will be present throughout.

7.5 Capability Hearing Outcomes

The Chair will consider all the information given by the manager such as the improvement plan, the meeting notes from the capability hearing meetings, support, training and any agreed reasonable adjustments that were implemented. Also, the Chair will consider any mitigating factors to support the employee's evidence.

After reviewing all the evidence, the Chair will decide on the capability case outcome, the outcome may include:

- A decision to take no further formal action
- Issue a capability warning active for six to twelve months with an extended improvement plan to be followed (in the event improvement is not made a further final formal capability meeting will be instigated)
- Relegation to a less senior role; this will only be possible in the event of a suitable vacancy
- Termination of employment on the grounds of capability

The employee can refuse to be redeployed, however, the only alternative available is usually dismissal. Any dismissals will be with full notice in line with the employee's contract and payment will be made in lieu of notice. In cases where an employee has had a previous hearing and breached the outcome such as a warning, a second formal capability hearing can be scheduled.

The outcome of the capability hearing will be communicated to the employee in writing within **5 working days** of the decision. The outcome letter will set out what was discussed, the reason for the decision, why other options were not appropriate including any mitigation and the outcome of the hearing. It will also give information on how the employee can appeal the decision. Enclosed with the outcome letter will be a transcript of the hearing recording or a copy of the meeting notes.

7.6 Second Formal Capability Hearing

If the employee continues to underperform after the first capability hearing, a second capability hearing will be scheduled. The manager must notify the employee that they will be called for a second hearing and must follow the procedures outlined in section 7.1. The employee should be informed in the letter that all outcomes, including dismissal, will be considered during the second hearing.

The second hearing must be chaired by an Assistant Director, who will review the outcome of the first hearing as well as any new information given for the second hearing. The employee must provide any supporting paperwork to the HR Employee Relations Team a minimum of **2 working days** before the hearing date. If there is a need to reschedule this hearing, the Chair must follow

the steps in section 7.3.

The possible outcomes for this hearing are as follows:

- No formal action (continue to manage informally and monitor for 12 months)
- Issue another warning for maximum of 12 months
- Offer redeployment if it has not been previously considered (for employees with disability or long-term conditions)
- Termination of employment

The offer to redeploy will be made at the discretion of the Chair, who will determine whether the employee will be able to perform successfully in the alternative role. If the employee refuses to be redeployed, the only option to consider is termination of employment. The Chair must seek advice from the HR Employee Relations team when considering redeployment to an alternative role or if the outcome may be dismissal.

7.7 Capability Hearing for a Chief or Deputy Officer

A Chief Officer (defined as a postholder who reports directly to the Head of Paid Service, e.g. a Director) or a Deputy Chief Officer (defined as a postholder who reports direct to a Chief Officer, e.g. an Assistant Director or any other post that reports to a Chief Officer) may only be dismissed by a panel of Members.

When a hearing is due to take place where the realistic outcome may be dismissal, the case must be heard by a Member panel and not by an Officer panel. The HR Employee Relations Team will liaise with the Committee Services team to arrange the date, time and venue for the hearing and will confirm the names of the Members who will form the panel. The process and timescales for Member hearings will normally be the same as for Officer panel hearings but will be subject to the diary commitments of Members.

The hearing will be recorded, and a transcript provided to the employee. The relevant Cabinet member may be invited to attend the hearing, but they may vote only as a substitute member for one of the substantive members of their Group on the Panel (not in addition). To be quorate, there must be at least 3 members in attendance.

8 Negligence and Capability

Negligence can be an action undertaken by an employee, which could result in harm or injury, this may be due to inadequate training, mistakes, or deliberate action of refusing to follow instructions. It is important to identify if the negligence was linked to capability (unable to do something) or misconduct (unwilling to do something). All negligence actions that are related to misconduct must be referred to the [Disciplinary Policy](#). Managers must contact the HR Employee Relations team to assess the case.

9 Failure or Refusing to Attend

If an employee refuses to attend any capability meetings including standard settings, this may be regarded as a misconduct issue, and it will be managed through the disciplinary policy. Employees are reminded that informal and formal capability meetings are a reasonable management request and should be prioritised. The manager should try to figure out why the employee is unable or having difficulties in attending the meeting. It may be useful to refer the employee to Occupational Health to assess their suitability to attend the meeting and if any adjustments are needed.

Also, the manager may consider having the meeting virtually if the employee's main workplace is from home. It is important to have a discussion with the employee and consult with the HR Employee Relations team for further advice on adjustments to formal meetings.

9.1 Sickness during capability procedure

If an employee is absent due to illness, the manager may reschedule the meeting once to enable the employee to recover before holding the meeting on a convenient day. If an employee is on long-term sick leave, the capability process will be put on hold, sickness management will begin and the employee will be managed under the sickness policy instead.

10 Redeployment and Capability

If the employee reports a health condition during any part of the capability procedure, which means they are no longer able to fulfil their substantive post, the manager may consider the option to redeploy the employee to a suitable post, if it is appropriate and reasonable. The manager should refer to [Organisational Change policy](#) for further information on redeployment for medical reasons.

If the employee continues to underperform after the redeployment and adjustments in the new role then the next step would be to proceed with the capability hearing.

11 Appeal Process

11.1 Appeal Hearing for Officers

The employee may appeal the outcome of the final, formal capability hearing. Appeals lodged against an outcome less than dismissal will be reviewed by an officer of more senior level than the officer who chaired the capability hearing. Appeals against dismissal will be heard by a panel of members.

11.2 Grounds of Appeal

The written appeal must clearly state the grounds for the appeal, and it should be sent to the Employee Relations Manager through [HALO](#) **within 10 working days from date stated on the Capability Outcome letter**. In the event of dismissal, the appeal should be sent by email to Employee Relations Manager.

The ground/s of appeal are as follows:

- The process is unfair.
- Any part or the overall process of the formal capability was unreasonable.
- The evidence presented in the hearing is not substantiated.
- The employee believes the decision at the capability hearing is unduly harsh.
- New evidence to be presented by the employee.
- Failure to implement reasonable adjustments.

Appeals are to be held normally no later than **20 days upon receipt of the appeal**. Details on how to appeal will be provided in the outcome letter. The decision of the appeal panel is final. A member of the HR Employee Relations team will provide HR advice to the panel. The employee is entitled to be represented at the appeal hearing by a workplace colleague or Trade Union Representative. The appeal hearing is structured in a similar way to the Capability hearing as referred at section 7.2 Hearing Format including Reasonable Adjustments and Virtual Hearings.

11.3 Appeal Hearing for a Chief or Deputy Chief Officer

As with other employees, an appeal lodged against the decision to dismiss must be heard by a Member panel. The dismissal appeal panel for Chief and Deputy Chief Officer hearings must be a different panel from the one involved in the original dismissal decision. As with all other hearings, the Member appeal panel hearing will be recorded and a transcript provided to the appellant in line with the policy.

Details on how to appeal will be outlined in the outcome letter, an appeal must be received by the HR Employee Relations team **no later than 10 working days** after the letter confirming the outcome of the hearing has been received.

11.4 Outcome

After the appeal hearing, the employee will be notified in writing of the outcome of their appeal **within 5 working days**. The appeal outcome can confirm the original capability outcome or decrease it, but not increase it as it is not a rehearing of the case. There is no further right to appeal.

12 Grievance During Capability

A grievance lodged during a capability process will be considered in line with the [Grievance Policy](#).

The manager has three options that they can follow to ensure that the grievance is responded to:

- Dealing with the grievance separately from the capability process
- Temporarily placing the capability process on hold whilst responding to the grievance
- Managing both the Grievance and Capability together

Managers should consider that temporarily placing the capability process on hold can give them enough time to properly investigate and consider the grievance. However, underperformance is likely to persist while the grievance is investigated. Depending on the nature of the grievance and

its relationship to the capability process, it may be appropriate to handle both at the same time. It is important to ensure that both processes are managed properly, and that the manager keeps a written record of all processes followed. Managers are required to contact the HR Employee Relations team for advice in managing capability and grievance. In the event a grievance is raised against the manager carrying out the capability management process, the employee relations team can advise on next steps.

13 Other Considerations

Any attempts to hinder the capability process will be considered a conduct issue and dealt with appropriately under the [disciplinary procedure](#). Should an employee choose to resign to circumvent the capability process, they may be required to serve a notice period. In this case, all efforts should be made to conduct and conclude the capability process before the end of their notice period. In the event the process is not concluded, it may be taken into account in the event the colleague applies to re-join Haringey Council as an employee within 12 months.

Where it is not possible to hold a face-to-face meeting under this procedure, the Council will conduct the process remotely. The employee and their representative will have to access [MS Team guidance](#) on the intranet to be able to access the meeting and hearing remotely. Their rights will not be affected, and the Council will ensure that the procedure remains fair and reasonable.

Capability concerns must be dealt with sensitively and with due respect for the employee involved. Any information communicated during the capability policy must be treated as confidential.

14 Support For Employees

This section covers the support employees can access during a capability procedure. The support schemes stated in this section can be accessed at any time during the process including the standard settings stage.

14.1 Trade Union

If an employee is member of Trade Union, they have the option to contact their Trade Union representative for support and advice on the capability case. The Trade Union will be able to accompany their members to formal meetings. Further information can be found [here](#).

14.2 Employee Assistance Programme

This service is confidential, and they provide counselling services related to personal, work-related, health or legal issues and can be accessed 365 days a year. When accessing this service, any questions asked by the EAP are not part of the capability procedure. The EAP service is only available for employees who are employed on a permanent, fixed-term or temporary contract. Further information can be found [here](#).

14.3 Other support

Employees who requires support for a virtual meeting, can follow the user guides and training on the intranet - [Microsoft teams](#). Also, employees can be referred to Occupational Health team for additional support when managing physical or mental health during the capability procedure.

In addition, the manager can conduct a stress risk assessment to ensure any stress related risk during capability can be managed. The Council also have a group of Mental Health First Aiders (MHFA) who are colleagues that have been trained to identify, understand, and support staff who may be facing with difficulties at work.

Further guidance on EAP, Occupational Health, MHFA, and stress risk assessment can be found on the Council's intranet under Service Area, [Public Health](#). For further information on Trade Union, members should contact their union directly using the details on the Councils intranet.

15 Person In Position Of Trust (PIPOT)

Where an allegation has been made against a person in a position of trust (PIPOT) you are required to refer to and follow the [protocol and practice guidance](#) on the internet.

16 Further References

Reasonable Adjustments and Access to Work
Flexible working policy
Sickness Absence Policy

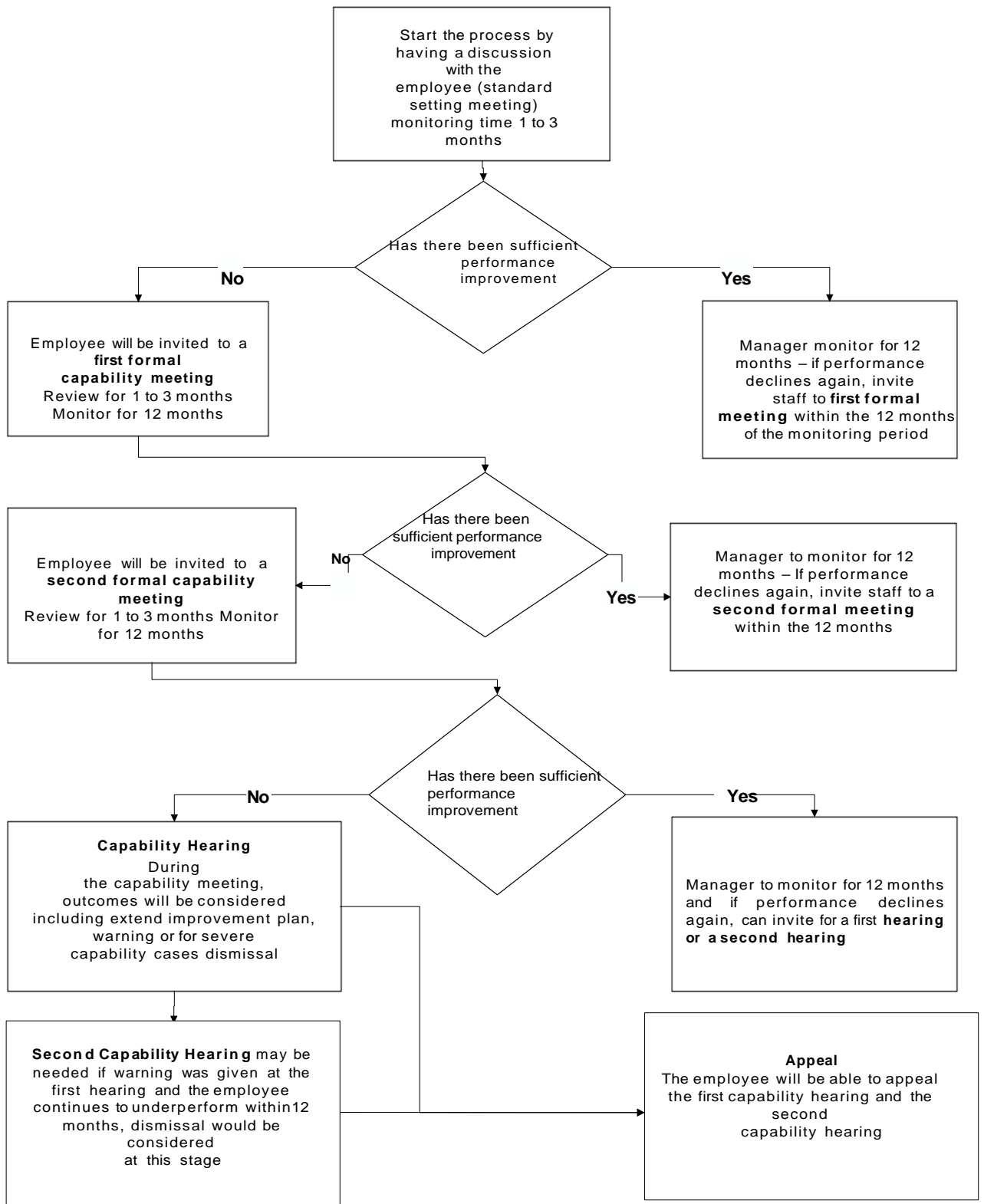
Appendix 1 - Improvement Plan Guidance

Targets	Targets for improvement areas
Timescale	A specific timescale needs to be given to the employee as a target to achieve the objectives set in the improvement plan – recommended time is 1 month to 3 months.
Measures	Identify the support and aims that the employee is required to achieve. For example, type of training given, how regular supervision will be scheduled, additional support from colleagues and manager, what the employee needs to achieve and adjustments if needed.
Feedback	Information on how the manager will deliver feedback to their employee and if at any stage, there is an indication that performance is not improving then the manager can hold another meeting to discuss the performance so far and extend the timescale, if needed.
Review	At the end of the improvement plan, the performance should be reviewed and if an improvement has been made then the case can be closed with a monitoring period of 12 months. If the employee has not made any improvement, then the manager can proceed to the next stage, which a warning will be considered.
Ongoing review (Informal and first formal)	If the employee successfully improves their performance, they will continue to be monitored for 12 months. Any decline in the performance during this monitoring period, the manager may invite the employee to the next formal meeting or hearing if it is the second formal hearing.

Appendix 2 - What managers should consider

- The timescale of the capability will depend on the case and if a manager would like further information on this, they should get advice from the HR Employee Relations Team
- Reasonable Adjustments should be applied at any stage within the process and if needed, the capability case can be placed on hold whilst the reasonable adjustments or reasonable measures are put in place for the employee.
- Personal situations can have a negatively impact in the workplace and performance, so it is important for managers to consider this when managing capability at the standard setting.
- Make sure that the underperformance is being managed under the correct policy.

Appendix 3 - Capability Overview



Document Control

Key Information			
Title		Capability at Work Policy	
Document Type		Policy	
Document Status		New Policy - DRAFT	
Author		Senior HR Specialist - Policy	
Owner		Head of Employee Relations, Business Partners & Reward	
Contact		Employment Practice Manager	
Approving Body & Date		General Purposes Committee	
Date of Publication			
Revision History			
Version	Date	Summary of Changes	Name
1.0	September 2024	New policy, using agreed process for policy revision.	Tanya Patchett