

# Public Document Pack

## Cyngor Bwrdeistref Sirol Pen-y-bont ar Ogwr

### Bridgend County Borough Council



Swyddfeydd Dinesig, Stryd yr Angel, Pen-y-bont, CF31 4WB / Civic Offices, Angel Street, Bridgend, CF31 4WB

*Rydym yn croesawu gohebiaeth yn Gymraeg.  
Rhowch wybod i ni os mai Cymraeg yw eich  
dewis iaith.*

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let us know if your language choice is Welsh.*



#### **Gwasanaethau Gweithredol a Phartneriaethol / Operational and Partnership Services**

Deialu uniongyrchol / Direct line /: (01656) 643148  
Gofynnwch am / Ask for: Mr Mark Anthony Galvin

Ein cyf / Our ref:  
Eich cyf / Your ref:

**Dyddiad/Date:** Wednesday, 19 April 2017

Dear Councillor,

#### **CABINET**

A meeting of the Cabinet will be held in the Council Chamber, Civic Offices, Angel Street, Bridgend, CF31 4WB on **Tuesday, 25 April 2017 at 2.30 pm.**

#### **AGENDA**

1. Apologies for Absence  
To receive apologies for absence from Members.
2. Declarations of Interest  
To receive declarations of personal and prejudicial interest (if any) from Members/Officers in accordance with the provisions of the Members' Code of Conduct adopted by Council from 1 September 2008.
3. Approval of Minutes 3 - 10  
To receive for approval the Minutes of a meeting of the Cabinet dated 28 March 2017.
4. Capability Policy 11 - 32  
The purpose of this report is to inform Cabinet of the proposed changes to the Capability Policy following consultation with the trade unions and to request authorisation to implement the revised policy.
5. Urgent Items  
To consider any items of business that by reason of special circumstances the chairperson is of the opinion should be considered at the meeting as a matter of urgency in accordance with paragraph 2.4 (e) of the Cabinet Procedure Rules within the Constitution.
6. Exclusion of the Public  
The minutes and reports relating to the following items are not for publication as they contain exempt information as defined in Paragraphs 14, 16 and 18 of Part 4 and Paragraph 21 of Part 5, Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

If following the application of the public interest test Cabinet resolves pursuant to the Act to consider these items in private, the public will be excluded from the meeting during such

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consideration.

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| 7. | <u>Approval of Exempt Minutes</u><br>To receive for approval the exempt minutes of a meeting of the Cabinet dated 28 March 2017. | 33 - 34 |
| 8. | <u>Commissioning and Award of Contracts in respect of the Supporting People Programme</u>  | 35 - 40 |
| 9. | <u>Waiver of Contract Procedure Rules (CPRs) - Corporate Landlord Project</u>  | 41 - 44 |

Yours faithfully

**P A Jolley**

Corporate Director Operational and Partnership Services

Councillors:

HJ David

CE Smith

Councillors

HJ Townsend

PJ White

Councillors

HM Williams

CL Reeves

CABINET - TUESDAY, 28 MARCH 2017

MINUTES OF A MEETING OF THE CABINET HELD IN COUNCIL CHAMBER, CIVIC OFFICES ANGEL STREET BRIDGEND CF31 4WB ON TUESDAY, 28 MARCH 2017 AT 2.30 PM

Present

Councillor HJ David – Chairperson

CE Smith  
CL Reeves

HJ Townsend

PJ White

HM Williams

Officers:

Randal Hemingway	Head of Finance & Section 151 Officer
Darren Mephram	Chief Executive
Mark Shephard	Corporate Director - Communities
Susan Cooper	Corporate Director - Social Services & Wellbeing
Andrew Jolley	Corporate Director Operational & Partnership Services
Andrew Rees	Senior Democratic Services Officer - Committees
Lindsay Harvey	Corporate Director Education and Family Support

1075. COUNCILLOR D SAGE

The Leader announced with sadness the recent passing of Councillor David Sage, a former Deputy Leader of the authority, colleague and friend.

All present stood in silence as a mark of respect.

1076. MR LINDSAY HARVEY

The Leader extended a warm welcome to Mr Lindsay Harvey, Interim Corporate Director Education and Family Support who was attending his first meeting of Cabinet since his appointment.

1077. DECLARATIONS OF INTEREST

None.

1078. APPROVAL OF MINUTES

RESOLVED: That the minutes of the meeting of Cabinet of 28 February 2017 be approved as a true and accurate record.

1079. THE PORTHCAWL ELVIS FESTIVAL 2017

The Corporate Director Communities reported on progress made by the organisers of the Porthcawl Elvis Festival in association with members of the Bridgend Events Safety Advisory Group (ESAG) for the 2017 event and to identify any associated cost implications for the Council.

He stated that the Council had developed a reputation for designing and delivering a programme of innovative and 'quirky' events and the aim of the events strategy is to assist event organisers and venues by providing a supportive environment. The Porthcawl Elvis Festival was first established in 2004 and draws approximately 30,000 visitors to the Festival each September, with the economic impact of the event estimated at £6.7m.

He reported that in 2015 research was carried out in recognition of some of the challenges that an event of this size and nature placed on the infrastructure and functioning of a town to identify potential improvements to maintain the positive economic impacts and reduce any negative social or environmental impacts. South Wales Police had also carried out a review in 2015 to consider the requirements for safety and policing at the event. In response to the recommendations arising from these pieces of work, a pilot, multi-agency approach was established, which involved the development of a series of coherent and joined up actions, supported by BCBC and South Wales Police, including: a new approach to traffic management, including road closures and traffic orders; enhanced street and beach cleansing services; toilet facilities; on-site presence of emergency services; and street pastors. This approach led to the 2016 event being considered by South Wales Police as the most successful in recent times with the fewest recorded incidents.

The Corporate Director Communities stated that it was proposed that this approach be taken again for 2017 with a value in respect of service provision of £20,000 being committed from the Strategic Events 2017/18 budget to carry out work in relation to traffic management; health and safety; street and beach cleansing and public order. He informed Cabinet that it had already provided financial support for the Urdd Eisteddfod in May 2017 and Seniors Open Championship in July 2017. The support to the Porthcawl Elvis Festival will result in the Strategic Events budget being fully allocated for 2017/2018 financial year.

The Cabinet Member Education and Regeneration in commending the proposal stated that the Council had worked in partnership to resolve the concerns articulated by the police and the authority was able to host very different events which would be money well spent and produce a return on investment.

**RESOLVED:** That Cabinet:

- (1) Noted the positive economic impact of the Porthcawl Elvis Festival on the local economy;
- (2) Delegated authority to the Corporate Director Communities as nominated lead Director to enter into further discussions with the Porthcawl Elvis Festival organisers and ESAG partners; and
- (3) Approved the allocation of £20,000 from the Strategic Tourism Events Fund, to put in place measures to ensure safe and effective management of the event.

**1080. AGREEMENT FOR THE COUNCIL TO HOST THE REGIONAL WALES COAST PATH OFFICER (SOUTH)**

The Corporate Director Communities sought approval for authority to sign a Memorandum of Agreement with Natural Resources Wales (NRW) to be the hosting authority for the Regional Wales Coast Path (WCP) officer for the South region until the 31 March 2021.

He reported that the Wales Coastal Access Improvement Programme is a scheme funded by the Welsh Government via Natural Resources Wales to deliver its commitment to increase public access to the coast of Wales. He stated that Regional officers will be employed directly by NRW but seconded to, and line managed on a day to day basis by, an officer from within one of the local authorities and will monitor,

maintain, improve and promote the Wales Coast Path in the region in which they are based. Following discussions between the seven local authorities within the South region Bridgend would be the host authority for the South Regional Officer. NRW has drafted a Memorandum of Agreement and other associated documents for signing by the host authorities.

**RESOLVED:** That Cabinet approved the Corporate Director, Communities signing a Memorandum of Agreement with Natural Resources Wales to be the hosting authority for the Regional Wales Coast Path officer for the South region until 31 March 2021.

**1081. WASTE SERVICES CONTRACT DEFERRED SERVICES COMMENCEMENT DATE**

The Corporate Director Communities sought approval to enter into a Deed of Variation to the recently completed Waste Services Contract, the purpose of which was to defer the commencement of certain services from 1 April 2017 to 5 June 2017. He also sought authority to develop an appropriate Deed of Variation and to agree its content prior to signature with the waste services contractor Kier Services Ltd.

The Corporate Director Communities informed Cabinet that the procurement process required a de-briefing of those bidding contractors considered to have fallen short of the competitive tender requirements, with regard to their submitted bids. The Council was challenged during the de-briefing process by one of the tenderers on the level of detail supplied to unsuccessful bidders. The de-briefing process had now been concluded and the successful contractor advised that he had been chosen as the Council's preferred bidder. It became apparent in the discussions that followed that the period now available to the contractor to successfully mobilise and commence the services was insufficient and to mitigate the impact of the compressed mobilisation period approve a variation to the commencement of certain services from the 1<sup>st</sup> April 2017 to the 5<sup>th</sup> June 2017 was sought. These deferred services include, but are not limited to, the collection of recycling and residual waste and the introduction of the residual waste restriction at the kerbside and civic amenity sites.

In response to a question from the Leader as to whether the communications plan would be updated to reflect the variation of the commencement of certain services, the Corporate Director Communities confirmed that the plan would be updated accordingly.

**RESOLVED:** That Cabinet authorised the Corporate Director – Communities in consultation with Corporate Director – Operational and Partnership Services and the Head of Finance and Section 151 Officer to conclude the negotiations as to the deferment of the commencement of certain services under the Contract, and finalise the Deed of Variation of the contractual terms with the successful bidder Kier Services Limited and for the Council to then formally enter into the Deed of Variation with Kier Services Limited.

**1082. SHARED REGULATORY SERVICES - REVIEW OF JOINT WORKING AGREEMENT**

The Corporate Director Operational and Partnership Services sought changes to the Joint Working Agreement between the partner Councils for the provision of Regulatory Services and approval to amend the regionalised service and to refer matters as appropriate to Council.

He reported that in April 2015, Bridgend County Borough Council, the City Council of Cardiff, and the Vale of Glamorgan County Borough Council signed a joint working agreement for the provision of regulatory services across the three Council areas. The

document created the Shared Regulatory Service and the Shared Regulatory Services Joint Committee. He stated that there were aspects of the Joint Working Agreement that require updating and amending, some of which are administrative in nature, while others advocate a change in the current operating practices. He informed Cabinet that if the revised paragraph 11.9.2.A was enacted, this could commit the Council, to additional costs of around £22,500 and would have to be met from the Directorate where available.

- RESOLVED:**
- (1) That Cabinet approved, and recommended to Council for approval, the proposed changes to the Joint Working Agreement between the partner councils for the provision of Regulatory Services.
  - (2) That the Senior Responsible Officer with responsibility for the Shared Regulatory Service be authorised to approve administrative changes to the Joint Working Agreement as long as there is no extension of delegations to the Shared Service or additional financial implications.

**1083. DELEGATION TO CHIEF OFFICERS - ELECTION PERIOD**

The Monitoring Officer sought approval of proposed arrangements to enable the Authority to continue to function effectively during the period between the forthcoming election and the appointment of a Leader and Cabinet at the Annual Meeting of Council.

He reported that due to the Local Government Elections taking place on 4 May 2017, existing Members hold office until the fourth day after the Elections, and new Members take office on the fourth day following the Elections. A Leader will be elected and a Cabinet appointed at the Annual Meeting of Council to be held on 17 May 2017. There would be a period of time during May 2017 when the Authority will be without a Cabinet. In order for the Authority to continue to function effectively, arrangements will need to be put in place providing for the delegation of functions not otherwise delegated.

It was proposed that from 4 May 2017 to 17 May 2017 any functions which are the responsibility of the cabinet shall be allocated to and discharged by the relevant Chief Officer. Where there is a requirement within Scheme of Delegation to consult with Cabinet Members, the requirement is suspended for the same period of time.

**RESOLVED:** That Cabinet approved the proposal set out above.

**1084. SCHOOL MODERNISATION PROGRAMME: OUTCOME OF PUBLIC NOTICE ON PROPOSAL TO MAKE A REGULATED ALTERATION TO AFON Y FELIN PRIMARY SCHOOL**

The Corporate Director Education and Family Support sought approval to make a regulated alteration to Afon Y Felin Primary School by enlarging the school with effect from 1 April 2017 and to request Cabinet issue a Determination as per the proposal.

He reported that Cabinet at its meeting on 4 October 2016 had approved consultation on the proposal to make a regulated alteration and consultation was carried out between 22 November 2016 and 6 January 2017 in accordance with the statutory School Organisation Code. Cabinet at its meeting on 31 January 2017, considered the outcome of the consultation with all parties and authorised publication of the draft consultation report and the issuing of a statutory notice regarding the proposal. Public notice was issued on 10 February 2017 lasting 28 days, with no objections received during this period.

The Cabinet Member Education and Regeneration in commending the proposal for enlargement commented that this was an indication of the high level of demand for places at the school where performance had much improved.

RESOLVED: That Cabinet:

- (1) Considered the outcome of the Public Notice as detailed in the report; and
- (2) Approved the implementation of the proposal to make a regulated alteration to Afon y Felin Primary School, by enlarging the school, with effect from 1 April 2017.

1085. SCHOOL MODERNISATION PROGRAMME: BRYNMENYN PRIMARY SCHOOL - MODIFICATION OF SCHOOL OPENING DATE FROM JANUARY 2018 TO FEBRUARY 2018

The Corporate Director Education and Family Support sought approval to modify the decision in respect of the opening date of the replacement Brynmenyn Primary School from 1 January 2018 to 26 February 2018.

He reported that it was originally anticipated that works would start on site for the construction of the new school at the end of November 2016 with completion in readiness for its opening on 1 January 2018. He stated that delays had been encountered with the commencement of construction due to the discharge of pre-commencement of planning conditions and the awarding of the contract. The delay in commencement had resulted in a start on site date for mobilisation of 16 January 2017 with construction subsequently commencing on 13 February 2017, with contractor estimating completion as 29 January 2018. It was anticipated that completion was likely to be nearer to February half term and modifying the opening date to the week after February half term would allow time for the school to decant from their existing provision into the new school building. He stated that the school's governing body were in agreement with the proposed modification to the school opening date.

RESOLVED: That Cabinet approved the modification of the decision to amend the opening date of the new Brynmenyn Primary School from 1 January 2018 to 26 February 2018.

1086. SCHOOL MODERNISATION PROGRAMME: OUTCOME OF THE EVALUATION REGARDING THE PROPOSED RELOCATION AND ENLARGEMENT OF MYNYDD CYNFFIG PRIMARY SCHOOL TO A REMODELLED SCHOOL BUILDING AND NEW PROVISION ON THE CURRENT CYNFFIG COMPREHENSIVE SCHOOL SITE

The Corporate Director Education and Family Support reported on the outcome of the consultation into the proposal to relocate Mynydd Cynffig primary school to the site of Cynffig Comprehensive School and of the outcome of the evaluation of the counter proposal received from the community (as part of that consultation) in respect of developing the Junior site for primary provision.

He also reported on the outcome of the review of the 2011 feasibility report in respect of the Junior site (the counter proposal ) and the outcome of the re-evaluation of both current junior and comprehensive school sites for primary provision. He informed Cabinet of the findings of the environmental impact assessment in respect of the civic amenity site and cement works and sought approval to abandon the scheme to relocate Mynydd Cynffig to the Cynffig Comprehensive site.

He reported that consultation was carried out on a proposal to relocate the primary school to the comprehensive school site, with considerable representations having been received. Concerns were also expressed regarding the location of a concrete mixing facility and the proposal to locate a civic amenity site on Village Farm Industrial Estate, Pyle. During the evaluation scoring sessions, it was recognised there would be difficulties in developing primary provision on both the Junior and Comprehensive sites. As a consequence of the evaluation, together with the revised budget estimates in respect of the development at the comprehensive site the panel considered that the proposal did not represent value for money. He stated that the budget cost estimate was prepared for the development of primary provision at the Junior site which was in excess of £10 million and excluded works to the external Highway. In light of the aforementioned potential costs, and considering the available budget for the scheme of £7.05 million, it was considered that circumstances had changed significantly. He informed Cabinet that a considerable increase in funding would be required to develop primary provision at the comprehensive site, which rendered the original proposal cost prohibitive. As the counter proposal had been costed at a similar level, there was insufficient funding currently available to take forward either scheme.

The Corporate Director Education and Family Support reported that the Welsh Government had approved the Strategic Outline Case in respect of the Mynydd Cynffig Primary scheme and had invited the Council to proceed to Outline Business Case stage. Subject to Cabinet's decision, the Welsh Government would be advised of the outcome of this process.

The Corporate Director Education and Family Support also reported that the current capital programme, approved by Council on 1 March 2017, showed the Mynydd Cynffig Primary School total scheme budget as £7.050 million, which comprised £5,044,798 funding from the Council and £2,005,202 funding from Welsh Government. He stated that the Council's contribution is a combination of general capital funding, capital receipts and S106 funding. He stated that the capital programme also included a budget of £700,000 in respect of highways works identified as necessary to complete the proposed relocation of the Primary school to the Cynffig site. He stated that in accordance with Financial Procedure Rules Council will be requested to approve the removal of the school scheme from the capital programme, along with the associated highways works.

The Cabinet Member Education and Regeneration commented that the Council had listened to the views of local residents during the consultation process. The Deputy Leader commented that the Council had a commitment for ensuring the children of Kenfig Hill had the very best education.

The Corporate Director Education and Family Support informed Cabinet that a further report will be provided on options for the future development of Mynydd Cynffig Primary.

**RESOLVED:**

That Cabinet:

- (1) Abandoned the proposal to relocate Mynydd Cynffig Primary to the Cynffig Comprehensive site.
- (2) Gave approval to inform Welsh Government to remove the scheme from Band A of the 21<sup>st</sup> Century Schools Programme
- (3) Requested that Council remove the scheme and associated Highways works from the capital programme.



1087. URGENT ITEMS

There were no urgent items.

1088. EXCLUSION OF THE PUBLIC

RESOLVED: That under Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, the public be excluded from the meeting during consideration of the following items of business as they contain exempt information as defined in Paragraphs 14, 16 and 18 of Part 4 and Paragraph 21 of Part 5 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.

The Monitoring Officer confirmed that one of the items was not subject to the public interest test for reasons of legal professional privilege and should therefore be considered in private. However the public interest applied in respect of one item of business.

Following the application of the public interest test in consideration of these other items, it was resolved that pursuant to the Act referred to above, to consider them in private, with the public being excluded from the meeting as they would involve the disclosure of exempt information of the nature as stated above.

1089. APPROVAL OF EXEMPT MINUTES

1090. DISPOSAL OF LAND AT ALL SAINTS WAY, PENYFAI

1091. COMMISSIONING AND AWARD OF CONTRACTS IN RESPECT OF THE PARTNER PROVIDERS OF FAMILIES FIRST PROGRAMMES LED BY THE EDUCATION AND FAMILY SUPPORT DIRECTORATE

The meeting closed at 3.25 pm

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## BRIDGEND COUNTY BOROUGH COUNCIL

### REPORT TO CABINET

25 APRIL 2017

#### REPORT OF THE CORPORATE DIRECTOR OPERATIONAL PARTNERSHIPS & SERVICES

##### CAPABILITY POLICY

##### 1. Purpose of Report

- 1.1 To inform Cabinet of the proposed changes to the Capability policy following consultation with the trade unions and to request authorisation to implement the revised policy.

##### 2. Connection to Corporate Improvement Plan / Other Corporate Priority

- 2.1 There are no direct links to the Corporate Improvement Plan and Corporate Priorities.

##### 3. Background

- 3.1 The Capability policy was last updated in March 2010.
- 3.2 The policy has been rewritten in order that it reflects the style of other HR policies and, at the request of one of the trade unions, provides a more detailed level of procedure within the policy itself [a set of managers' guidelines are also available.

##### 4. Current situation / proposal

- 4.1 The policy has been updated in line with 3.2 above.
- 4.2 The revised policy has been agreed with the 3 recognised trade unions.
- 4.3 The revised policy is attached at Appendix A, with the original being attached at Appendix B.

##### 5. Effect upon Policy Framework & Procedure Rules

- 5.1 There is no impact on the policy framework and procedure rules.

##### 6. Equality Impact Assessment

- 6.1 The original Initial Screening Equality Impact Assessment remains valid.

##### 7. Financial Implications

- 7.1 There are no financial implications arising from the proposed changes to the policy.

## 8. Recommendation

- 8.1 Cabinet is asked to approve the revised Capability policy with effect from the date of this report.

**Contact Officer:** Sarah Kingsbury  
Head of HR/OD  
**Telephone:** (01656) 64201  
**E-mail:** [Sarah.kingsbury@bridgend.gov.uk](mailto:Sarah.kingsbury@bridgend.gov.uk)  
**Postal Address:** Ravens Court, Brewery Lane, Bridgend. CF31 4AP  
**Background Documents:** None

**BRIDGEND COUNTY BOROUGH COUNCIL**  
**CYNGOR BWRDEISTREF SIROL PEN-Y-BONT AR OGWR**

**CAPABILITY POLICY - PROCEDURE & PRACTICE**

**SCOPE**

**This policy will apply to all employees of Bridgend County Borough Council except:**

- **Those under probation.**
- **Those employed under the JNC for Chief Officers Conditions of Service.**
- **Those employed by Governing Bodies in educational establishments under delegated powers.**

**JANUARY 2017**

## **1. Introduction**

- 1.1 Bridgend Council aims to ensure outstanding service delivery for all residents of the County Borough and recognises that the competence and capability of its workforce is fundamental to achieving this goal.
- 1.2 Section 98(3) of the Employment Rights Act 1996 defines 'capability' as the ability of a member of staff to perform their required work to an acceptable standard by reference to skill, aptitude, health or any other physical or mental quality.
- 1.3 In the majority of cases employees meet and even exceed the requirements of the role. However, in some instances individuals will experience difficulties in achieving the level of competency expected within their role.
- 1.4 Where employees are struggling to meet the requirements of their role, the council will ensure that necessary support and suitable time is available to allow the individual to improve their performance.
- 1.5 Whilst the council will support individuals who are underperforming, it is ultimately the responsibility of the employee to take all actions necessary to improve their performance.

## **2. General Principles**

- 2.1 Employee capability issues will be managed through the following stages;
  - Initial management discussion
  - Informal stage
  - Formal stage (1<sup>st</sup> and 2<sup>nd</sup> formal stages)
  - Final formal stageThese stages will be explained further in this policy.
- 2.2 Nothing in this procedure is intended to prevent managers taking appropriate action during the course of the management of their employee.
- 2.3 The procedure set out in this policy seeks to ensure that as far as is reasonably possible all employees are treated consistently and are fully aware of their rights and obligations at all stages. At all stages, the procedure will be applied with consideration of the Equalities Act 2010 and, where required, suitable alternative adjustments will be considered.
- 2.4 Where unsatisfactory performance is directly attributable to issues of ill health, or higher than acceptable levels of absence, this will be dealt with under the [Absence Management policy](#). The capability and management of absence procedures can run in tandem where appropriate and where there is a clear differentiation between the two issues.
- 2.5 A distinction must be drawn between capability and unacceptable levels of performance/conduct attributable to a wilful refusal to work satisfactorily. A simple distinction can be identified by “won’t do” as opposed to “can’t do”. The former is a matter of conduct which will be dealt with by the Authority's Disciplinary policy.

- 2.6 Whilst every effort will be made to support an employee to improve their performance where capability issues are identified, the council is unable to guarantee continued employment if appropriate and sustainable performance is not achieved following the exhaustion of this policy.

### **3. Initial Management Discussions**

- 3.1 Where a line manager is concerned about poor or unsatisfactory performance, they should raise this promptly with the individual concerned. Ordinarily, the issue should be discussed during a regular supervision meeting, however, a specific meeting may need to be arranged should no suitable alternative meetings be scheduled. Discussions at this stage are between manager and employee as part of the normal employment relationship. A note of the meeting should be taken and shared with the employee, in line with normal supervision arrangements.
- 3.2 The line manager should set out clearly the identified areas of concern and remind the employee, in a constructive and positive manner, of the expected standards.
- 3.3 In the majority of cases, performance issues can be addressed through targeted interventions agreed between line manager and employee during this discussion and it is not necessary to commence the capability process. These interventions would need to be documented and monitored over an agreed period (ordinarily 4 weeks) to evidence achievement.
- 3.4 Should the line manager consider that performance issues remain following the monitoring period the informal stage of the process must be instigated.

### **4. Informal Stage**

- 4.1 Where a capability issue has not been resolved via the initial management discussions, the line manager should arrange a further meeting with the employee to instigate the informal stage of the capability procedure.
- 4.2 This meeting should be between the line manager and employee and should be arranged specifically to discuss the capability concerns. The manager must make the employee aware that they have the right to be accompanied at this meeting by a Trade Union representative or work colleague. It is the employee's responsibility to arrange their own representation and ensure that they are available for the scheduled meeting.
- 4.3 During the meeting the line manager must establish as specifically as possible;
- where and how work performance has been found to be below standards, including missed deadlines, unreasonably low output or high error rates
  - how the agreed targeted interventions have failed to be met
- This detail will need to include evidence compiled during the monitoring stage of the initial management discussion.
- 4.4 The employee will be offered the opportunity to respond, for example, to identify any possible contributory factors to justify the performance issues.

- 4.5 The manager will then work with the employee to develop a formal action plan to improve performance to the required standard over a set period of time. As the responsible officer, the line manager will have the final say on performance requirements.
- 4.6 The agreed action plan will set out;
- specific targets/work to be completed
  - review period within which the improvement is expected
  - detail of additional training/support (inc equipment) which may be required
  - any changes to working arrangements or practices for the period
  - frequency of monitoring meetings (dependent upon length of review period, but ordinarily no longer than fortnightly).
- It is important to ensure that the objectives set are SMART. A template action plan is attached at Appendix A.
- 4.7 The line manager must make a note of the meeting. Copies of the meeting note and the agreed action plan will be circulated to all attendees at the end of the meeting.
- 4.8 The line manager is responsible for ensuring that work output is monitored closely on a day to day basis and discussed thoroughly during the scheduled monitoring meetings. These monitoring meetings will be noted to evidence progress made against the action plan objectives.
- 4.9 If, after the conclusion of the review period, performance improves to the required standard, no further action will be necessary. The manager will inform HR of the satisfactory outcome of the review, so that HR can advise the employee in writing and place a copy of the letter on the employee's personal file. The letter will confirm that the employee will be expected to maintain this level of performance and that this will be monitored as per normal management arrangements.
- 4.10 Where some improvement is made but the required standard is not achieved, the line manager may decide to extend the review period. This decision will be confirmed in writing to the employee. The line manager is not obliged to extend the review period if they are not satisfied that sufficient progress has been made.
- 4.11 Where the line manager believes that sufficiently serious capability issues remain and have not been adequately addressed by the informal action plan, formal action will be pursued.

## **5. Formal Stage (1<sup>st</sup> and 2<sup>nd</sup> formal stages)**

- 5.1 To instigate the formal stage, the line manager will contact their Employee Relations Advisor.
- 5.2 The ER advisor will review all documentation and discuss the matter with the manager. Where it is agreed that further formal action is required, the employee will be invited to attend a formal hearing.
- 5.3 The letter inviting the employee will be sent by HR on behalf of the manager and will include;



- The reason for the hearing.
- The name of the responsible officer who will chair the hearing.
- The employee's right to be represented by a trade union representative or work colleague who may speak on their behalf.
- Copies of any documentation to be used at the meeting.
- A copy of the Capability Policy setting out the process that will be followed.

5.4 At the meeting the line manager will;

- outline the standard of work performance required from the role;
- evidence how the employee's performance has fallen short of this standard;
- confirm all informal measures taken to date and evaluation of progress against actions.

5.5 The employee will be given opportunity to explain and/or give evidence to justify their performance level.

5.6 Based on all of the information presented, the responsible officer will determine whether a sanction is required. Outlined below are the possible sanctions, along with the length of time they remain live:

<b>Sanction</b>	<b>Period</b>
First written warning	6 months
Second written warning	12 months
Final warning	18 months
Review of Employment	

The level of the warning issued will depend on the circumstances of the individual case. In exceptional circumstances, where evidence identifies that an employee's continued capability issues are the result of wilful refusal to work to required standards, the responsible officer can recommend invoking the disciplinary policy.

5.7 The employee will receive confirmation of the sanction in writing. The letter will also detail the desired standard of performance during the warning period and any additional support identified to assist the employee in achieving this standard.

5.8 Performance will continue to be monitored during the warning period and if the expected improvement has not been achieved at the end of the warning period, a further hearing will be called (following the process outlined above 5.3 - 5.5) where the responsible officer will consider a further sanction.

5.9 In extreme circumstances it may be necessary to extend the period of the warning. The extension to any warning will not exceed 12 months more than the initial warning.

## **6. Final Formal Stage – Review of Employment**

6.1 Where serious capability issues continue to exist or persistent underperformance has not been adequately addressed, the Council will be forced to review the continued employment relationship.

- 6.2 The case will be referred to the Chief Officer and a formal hearing will be held. The responsible officer will provide the Chief Officer with all relevant information collated so far, including;
- Area(s) where the employee has failed to meet the required performance standards
  - Action plans agreed during the informal and formal stages
  - Evidence of support offered to assist the employee improve their performance
  - Notes of the monitoring meetings
- 6.3 The employee will be informed in writing of the hearing and will be given at least 7 calendar days' notice. The employee has the right to be accompanied at this meeting by a Trade Union representative or work colleague (no external representation is allowed). It is the employee's responsibility to arrange their own representation and ensure that they are available for the scheduled meeting
- 6.4 The employee will also have the opportunity to provide any documentation they feel is relevant to the case. All documentation must be exchanged no later than two working days prior to the hearing. No undeclared documentation can be discussed/referred to during the hearing.
- 6.5 The procedure to be followed at the capability hearing is attached at appendix B.
- 6.6 The Chief Officer will determine the outcome of the hearing, which may include but is not limited to;
- The employee's performance is assessed as suitable and no further action is required
  - Consideration given to securing suitable alternative employment, ordinarily in a lower graded post. Such a decision will only be made where the individual has worked in a similar role previously and demonstrated that they are capable of fulfilling the responsibilities.
  - A decision is made to dismiss the employee immediately on the grounds of capability.
- 6.7 Suitable Alternative Employment  
Where the Chief Officer decides that suitable alternative employment is an appropriate resolution to the capability issue, HR will coordinate the process of identifying alternative employment opportunities. Alternative employment opportunities will be explored over the length of the notice period. Ordinarily, the suitable alternative employment will be in a lower graded post which is already vacant. The employee will be offered the post and will have 5 working days to respond. The offer is subject to a four week trial period, which allows both the employee and new line manager an opportunity to assess suitability of the new arrangement. The following principles apply in all circumstances;
- No pay protection is attached to the alternative employment.
  - If the employee refuses to accept or is unsuccessful in securing alternative employment, their employment will be terminated in line with the below paragraph.
- 6.8 Termination of Employment – Dismissal on the grounds of capability  
The decision to terminate an individual's employment on the grounds of capability must be communicated to the employee in writing, including the right

of appeal, within 7 calendar days of the interview; a copy should be kept on the employee's personal file. The contract of employment will end on that day with pay in lieu of notice.

## **7. Appeal Procedure**

- 7.1 Any individual shall have the right of appeal against any formal action under the Capability Procedure by writing, within 7 calendar days of receipt of the letter confirming the action, to Human Resources. The appellant must indicate the basis of the Appeal.
- 7.2 The procedure to be followed in such appeals is attached as Appendix C.
- 7.3 All appeals other than those against dismissal will be heard by an independent Chief Officer or his / her representative.
- 7.4 Appeals against dismissal will be heard by Members.
- 7.5 In cases where an appeal against dismissal is upheld by Members and a decision made to re-instate/re-engage, the appellant shall suffer no loss under his/her previous contract of Employment from the date of his/her dismissal up to the date of re-employment. Any payment in lieu of notice is to be taken into account in calculating any loss.

### **NOTE:**

- The term 'Chief Officer' means Chief Executive, Corporate Director or Head of Service of the Council.



**PROCEDURE TO BE ADOPTED AT CAPABILITY HEARING**

1. The capability hearing will be chaired by the Responsible Officer, advised by a Human Resources Advisor. These persons make up the Hearing Panel.
2. The line manager will present the case against the employee, with reference to supporting evidence from the informal stage and any witnesses they wish to call, to the Responsible Officer and the Human Resources Advisor.
3. The panel will be invited to ask questions on the information presented.
4. The employee and/or his/her representative will be given the opportunity to present his/her case to the Responsible Officer and the Human Resources Adviser.
- 4.7 The employee and/or representative may be questioned on any aspects of his/her presentation and witnesses may be questioned on their evidence by the panel.
- 4.8 The line manager will be given the opportunity to sum up.
- 4.9 The employee or his/her representative will be given the opportunity to sum up.
- 4.10 All witnesses will withdraw immediately after giving their evidence and remain separate from those waiting to give evidence. The line manager, the employee and his/her representative will also withdraw at this point.
- 4.11 The panel may decide that further information is required. In these circumstances the hearing will adjourn to permit this and reconvene as soon as practicable. This decision will be communicated in writing to the employee and representative.
- 4.12 After the deliberation is completed all parties will be recalled and the employee and their representative advised of the conclusions reached and the reasons for them.
- 4.13 If, during the hearing, the matter is found not to have substance, no further action will be taken and this will be confirmed in writing.
- 4.14 The employee should be informed of the reasons for any action taken and if appropriate be advised of their right of appeal. The employee must be told of this at the hearing and this will be confirmed in writing within seven calendar days.

**PROCEDURE TO BE ADOPTED AT MEMBER APPEAL**

This procedure applies to the following policies: Disciplinary; Capability; Management of Absence and Dignity at Work.

There is a separate procedure which applies to the Grievance policy.

1. The hearing will be held by the Grievance and Disciplinary Appeals Committee, who will be supported by one of the Council's Solicitors in the role of Clerk, a Human Resources Advisor and a minute taker.
2. The parties and their representatives shall be called in simultaneously before the Committee. At the start of the hearing the Chairman will introduce those present and will explain the procedure.
3. The Chief Officer or his/her representative will present the management's case calling, if appropriate, any witnesses to assist in substantiating or clarifying the facts.
4. The appellant or his/her representative will be entitled to question the Chief Officer or his/her representative and any witnesses.
5. The appellant or his/her representative will present the appellant's case calling, if appropriate, any witnesses.
6. The Chief Officer or his/her representative will be entitled to question the appellant and any witnesses.
7. The Members, Clerk of the Committee and the Human Resources Advisor will be entitled at any time during the hearing, with the consent of the Chairman, to ask questions.
8. Where new evidence arises during an appeal it may be appropriate to adjourn in order to investigate or consider such points.
9. The Chief Officer or his/her representative will be given an opportunity to sum up but will not be able to introduce any new evidence at this stage.
10. The appellant or his/her representative will be given an opportunity to sum up. He/she will not be able to introduce any new evidence at this stage.
11. All parties other than the Members of the Committee, the Human Resources Advisor and the Legal Clerk will withdraw from the meeting. The Human Resources Advisor and Legal Clerk will remain in the meeting whilst the Committee require advice.
12. Once the Committee has received advice from the Human Resources Advisor and Legal Clerk the Human Resources Advisor and Legal Clerk will withdraw while the Committee considered the appeal.

13. The Committee may recall the Human Resources Advisor, Legal Clerk and minute-taker to clarify any points. Should the Committee require advice from the Human Resources Advisor or Legal Clerk both officers should be recalled together.
14. The Committee may recall the parties to clarify any points but, if so, must recall both parties and their representatives and allow them to comment if they so wish.
15. After the Committee has reached a decision on the appeal the parties and their representatives will be recalled and the decision announced to them together with the reasons for it. The decision will be confirmed in writing by the Human Resources Advisor as soon as possible after the hearing.

**NOTE:**

- The term 'Chief Officer' means Chief Executive, Corporate Director or Head of Service of the Council.

The appellant may be represented by either his / her Trade Union representative or by a work colleague.

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**BRIDGEND COUNTY BOROUGH COUNCIL**  
**CYNGOR BWRDEISTREF SIROL PEN-Y-BONT AR OGWR**

**CAPABILITY POLICY - PROCEDURE & PRACTICE**

**SCOPE**

**This policy will apply to all employees of Bridgend County Borough Council except:**

- **Those under probation.**
- **Those employed under the JNC for Chief Officers Conditions of Service.**
- **Those employed by Governing Bodies in educational establishments under delegated powers.**

**MARCH 2010**

## **1. Introduction**

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.

### **Note:**

- Health is covered by the Absence Management Policy.
- If an issue of Health becomes evident during the process the matter will be referred to the Absence Management Policy and the Capability Procedure suspended.
- A distinction must be drawn between incompetence and lack of performance which is attributable to a wilful refusal to work satisfactorily. The latter is a matter of conduct which will be dealt with by the Authority's Disciplinary policy.
- This procedure is not intended to be used when the employee is undergoing their probationary period. The probation policy would apply in those circumstances.
- All managers need to be mindful of the implications of the Disability Discrimination Act 1995 when considering capability issues.
- All correspondence in respect of the Formal Procedure must be issued from the Human Resources Service Unit.

## **2. Aim**

- 2.1 The main aim of the procedure is to improve performance to an acceptable standard of an employee with regard to work standards, quality, productivity, or other capability factors. The procedure should only be used when management has ensured that the necessary support in terms of proper supervision, training, counselling and encouragement has been provided.

Nothing in this procedure is intended to prevent managers taking appropriate action during the course of the management of their employee.

The procedure also seeks to ensure that as far as is reasonably possible all employees are treated consistently and are fully aware of their rights and obligations at all stages.

All warnings will remain on file until they have lapsed.

## **Informal Procedure**

### **3. Initial Support /Informal Stage**

- 3.1 Where a direct line manager is concerned with the performance of an employee, she/he will:
  - 3.1.1 Speak to the employee about the difficulties being experienced;
  - 3.1.2 Provide for, or make arrangements for refresher or other forms of training where appropriate. These concerns should be documented in writing within 7 days of the conversation;
  - 3.1.3 Counselling will be available to the employee;
  - 3.1.4 Provide closer supervision and support for a reasonable period of time;
  - 3.1.5 Agree appropriate achievable performance targets and review times;
  - 3.1.6 Review the employee's progress at appropriate intervals (normally one to three months);
  - 3.1.7 Make a note on the employee's personal file as to any actions taken.
- 3.2 When the above has been implemented and the employee's progress is judged by the direct line manager to have reached the appropriate standard, the employee is to be informed (and in writing), within 7 calendar days of the interview that the appropriate standard has been reached. A note to that effect placed on the employee's personal file.
- 3.3 However, if after the above support has been provided, the employee's standard of performance is still considered inadequate, and his/her explanation is not satisfactory, the direct line manager should report the matter to the next most senior line manager for it to be dealt with under the formal stages of this procedure, and should advise the employee accordingly. Human Resources should also be consulted prior to invoking the formal procedure.

## **Formal Procedure**

### **4. Stage 1 - First Written Warning**

- 4.1 Where it is considered necessary to take formal action because of the failure of the employee to meet the required performance standards, the employee should receive written notification, giving a minimum period of 7 calendar days notice that an interview under the procedure will be held. The notification should state the specific nature of the unsatisfactory work performance and that the employee may be accompanied at the interview by a Trade Union representative or another employee.

4.2 At the interview, the work performance issues will be discussed between the Responsible Officer (ordinarily the direct line manager), HR advisor and employee and/or his/her representative. All parties should be given every opportunity to put forward their case. Should the Responsible Officer consider it justified, a first written warning shall be issued stating:

- 4.2.1 The nature of the unsatisfactory work performance as discussed at the interview;
- 4.2.2 The action required by the employee to improve performance; including meeting appropriate achievable performance targets;
- 4.2.3 Any further training or support which is to be provided;
- 4.2.4 The date at which the issues will be the subject of a follow-up review - normally one - three months
- 4.2.5 The employee's right of appeal

4.3 The first written warning should be sent to the employee within 7 calendar days of the interview and a copy kept on the employee's personal file.

4.4 If upon the follow-up review the employee has improved their performance to a satisfactory standard a letter stating this should be sent to them confirming this to be the case.

## **5. Stage 2 - Second Written Warning**

5.1 Should the follow-up review at Stage 1 indicate a further cause for concern and it is considered that an interview under this stage of the procedure is warranted, the employee should be informed in writing. Notification of the interview and its format at will be in accordance with that detailed in Stage 1.

**NB:** At this stage if it is considered justified a second written warning shall be issued.

## **6. Stage 3 - Final Warning**

6.1 Should the follow-up review at Stage 2 indicate a further cause for concern and it is considered that an interview under this stage of the procedure is warranted, the employee should be informed in writing. Notification of the interview and its format will again be in accordance with that detailed in Stage 1.

**NB:** At this stage if it is considered justified a final written warning shall be issued.

## **7. Stage 4 - Termination of Employment / Alternative Employment**

- 7.1 Should the follow-up review at Stage 3 indicate a further cause for concern it will be considered as to whether a final interview under this stage of the procedure is warranted, the employee must be informed.
- 7.2 The employee should receive written notification giving a minimum period of 7 calendar days notice that an interview under the procedure will be held by the Responsible Officer or his / her representative. The notification should state the reason for the interview and that the person may be accompanied by his/her Trade Union representative or another employee.
- 7.3 If it is decided that the employee's performance has not improved to the standard required, consideration will be given to the option of offering alternative employment. It is possible that this would be in a lower graded job. Salary will not be protected and therefore this would need to be mutually agreed. If none are available, or this is not a suitable option, the decision to terminate the employee's contract on the grounds of 'lack of capability' must be communicated to the employee in person. This action must be confirmed in writing, including the right of appeal, within 7 calendar days of the interview; a copy should be kept on the employee's personal file.

## **8. Appeal Procedure**

- 8.1 Any individual shall have the right of appeal against any formal action under the Capability Procedure by writing, within 7 calendar days of receipt of the letter confirming the action, to Human Resources. The appellant must indicate the basis of the Appeal.
- 8.2 The procedure to be followed in such appeals is attached as Appendix A.
- 8.3 All appeals other than those against dismissal will be heard by an independent Chief Officer or his / her representative.
- 8.4 Appeals against dismissal will be heard by Members.
- 8.5 In cases where an appeal against dismissal is upheld by Members and a decision made to re-instate/re-engage, the appellant shall suffer no loss under his/her previous contract of Employment from the date of his/her dismissal up to the date of re-employment. Any payment in lieu of notice is to be taken into account in calculating any loss.

## **9. Cancellation of Warnings**

- 9.1 In deciding what level of warning to issue, any previous warnings under the Capability Procedure may be taken into account. However, any such action will be disregarded for progressing to a further level after the following periods of warning have lapsed:

First Written Warning	6 Months
Second Written Warning	12 Months
Final warning	18 Months
Dismissal	

Under this procedure warnings will be cancelled automatically if the Chief Officer or his / her representative does not carry out the follow-up review as agreed.

## **10. Statutory Standards**

- 10.1 The provisions of the Employment Rights Act 1996, Section 98;
- 10.2 The ACAS Code of Practice;
- 10.3 The ACAS Advisory Handbook;
- 10.4 The provisions of the Disability Discrimination Act 1995.

**PROCEDURE TO BE ADOPTED AT MEMBER APPEAL**

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13. The Committee may recall the Human Resources Advisor, Legal Clerk and minute-taker to clarify any points. Should the Committee require advice from the Human Resources Advisor or Legal Clerk both officers should be recalled together.
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**NOTE:**

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The appellant may be represented by either his / her Trade Union representative or by a work colleague.



By virtue of paragraph(s) 14, 16, 18 of Part 4 of Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 16 of Part 4 of Schedule 12A of the Local Government Act 1972.

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By virtue of paragraph(s) 14 of Part 4 of Schedule 12A of the Local Government Act 1972.

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