

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 (1st and 2nd 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 (1st and 2nd 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:

| Sanction | Period |
|------------------------|---------------|
| 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.