

**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**

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, Assistant 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.