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Capability Policy



STRONG HERITAGE | STRONG FUTURE
RHONDDA CYNON TAF
TREFTADAETH GADARN | DYFODOL SŴR

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1. INTRODUCTION

The aim of the Council is to ensure outstanding service delivery for all residents of Rhondda Cynon Taf. The Council recognises that the competence and commitment of its employees is fundamental to the achievement of this goal. The Council is therefore committed to ensuring that all employees have the appropriate skills, knowledge, competence and aptitude to undertake their roles effectively.

In the vast majority of cases, employees meet and even exceed the performance requirements of their roles. However, in some circumstances, individuals will experience difficulties in demonstrating the levels of competence required to perform their job effectively.

Where employees are performing below expectations, the role of the Line Manager will be to bring this to the attention of the individual and to work closely with them to improve their performance to an acceptable level. The objective of the Council will always be to set out a constructive approach to achieving improved work performance through effective supervision, mentoring, training, and performance review and development.

Whilst the Council will support individuals who are underperforming to reach the required level of performance, it is ultimately the responsibility of employees to take whatever action is necessary to improve their performance.

2. DEFINITION OF CAPABILITY

“Capability” refers to an employee’s skills, ability, aptitude and knowledge in relation to the post to which they are appointed.

A capability issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties to the required standard. This may be due to a lack of professional insight, an inability to cope with reasonable workloads or not being able to meet identified standards. Alternatively, it may be due to an inability to prioritise work, a lack of aptitude for the work itself, inadequate training or difficulty in adapting to changes in the workplace, for example, the introduction of new technologies.

3. DISTINCTION BETWEEN CAPABILITY AND CONDUCT

A capability issue exists where no matter how hard an employee tries he/she is simply unable to perform the job to the standards required by the Council. It is the agreed standard that is relevant, and not the manager’s personal opinion of the way the employee carries out his or her duties.

If, however, an employee fails to come up to the required standard as a result of his or her own carelessness, negligence or laziness, this is not a capability issue but could be regarded as misconduct and as such must be dealt with in accordance with the Council's Disciplinary Policy.

One of the key distinctions between capability and conduct is that a capability issue will usually be outside of the employee's direct control, whilst the same employee will have full control over his or her conduct at work.

It can sometimes be difficult to establish whether an employee's poor performance is due to a capability issue or lack of effort, laziness or negligence. In some cases, there may be an element of both capability and conduct. Managers should give the employee the benefit of the doubt initially and proceed to performance manage the employee in accordance with this policy, rather than initiating disciplinary proceedings. However, if subsequent evidence suggests misconduct, managers should pursue the Council's Disciplinary Policy.

4. DISTINCTION BETWEEN CAPABILITY AND ILL-HEALTH

Where an employee's performance does not meet the required levels due to an underlying medical condition, or where there are unacceptably high levels of sickness absence that impact on performance, this must be dealt with in accordance with the Council's Sickness Absence Policy. Such circumstances do not constitute a capability issue and should therefore not be dealt with in accordance with this Policy.

Where it is unclear to the manager that the performance issue is due to an underlying medical condition, or in circumstances where the underlying medical condition is hidden by the employee, the manager may proceed to performance manage the employee in accordance with this Policy. However, as soon as the manager becomes aware of the underlying medical condition, he/she should deal with this matter in accordance with the Council's Sickness Absence Policy.

5. PURPOSE OF THIS POLICY

The purpose of this Policy is to provide Line Managers with the necessary information in order to:

- Make every effort to help and retain an individual with a capability problem, whilst recognising that the Council cannot guarantee to maintain employment.
- Ensure employees are performing their roles effectively and capably and to deal with those employees not performing, in a fair and consistent manner.
- Encourage sensitive, realistic and constructive approaches from all concerned when dealing with capability issues.

- Clarify and confirm that the managerial responsibility for resolving capability issues rests with Line Managers, with advice and support from Human Resources as required.
- Ensure that capability difficulties are dealt with efficiently within agreed time periods (according to circumstances) and with clear outcomes at all stages.

It should be noted that this Policy does not apply to Chief Officer related posts. These posts are subject to alternative arrangements that are already in place to deal with such issues.

6. INITIAL ACTION

Where there is poor or unsatisfactory performance, the manager should point this out to the employee as soon as possible and remind him/her, in a constructive and positive manner, of the standard required. Wherever possible, this should be done at normal regular supervision or regular performance management meetings. If, however, the issue is identified at a time when a regular meeting is not planned, a specific meeting may need to be arranged.

Following this meeting, it may be decided that the performance issue can be easily addressed through informal targeted interventions and it is not necessary to start the capability procedure. If this is the case, the manager and employee should agree actions and review these as appropriate. It is anticipated that the majority of performance related issues will be resolved promptly and informally at this level.

If, however, it is decided that there is a more persistent or more serious capability issue, the manager should inform the employee that they intend to initiate the capability procedure and should proceed to follow the informal stages of the Policy.

7. INFORMAL ACTION

Where the manager believes that there is a more persistent or more serious capability issue, they should arrange a meeting with the employee.

This meeting should be between the manager and the employee, although the manager should make the employee aware that a trade union representative, or work colleague, may accompany them to the meeting and act as an advocate for the individual.

The objective of this meeting is to:

- Inform the employee of where and how work performance is below standard.
- Give the employee an opportunity to explain and explore the issues of their underperformance.
- Identify possible reasons for the issue identified.
- To work out, with the employee, a plan to improve performance to the required standard.
- Identify, where appropriate, the support mechanisms required by the employee to improve their performance.

Action Plan

At the end of the meeting, the manager should agree with the employee an action plan to resolve the issues identified. (See Template 2: Example Action Plan, in the Manager's Toolkit). This plan will set the review period within which an improvement in performance is required, specify the additional training or supervision, changes in working arrangements or practices, provision of equipment or facilities, referral to an other or other agencies, or any other appropriate measures.

Review periods, must be reasonable in length, depending on the nature of the job. In a job where there are few and simple tasks, a period of a few days may be reasonable, particularly where the capability issue relates to a task which is fundamental to the job and emerges in the early stages of appointment. Where the job is complex, and improvements cannot be assessed over a short period, a review period of several weeks, or longer, may be necessary.

Notes

The manager should make a note of the meeting. (See Template 1: Record of informal/formal meetings, in the Manager's Toolkit). Copies of this and the action plan should be signed by the employee at the end of the meeting to evidence that they agree to the content of the notes and the objectives set out in their action plan. Copies of this documentation will be sent to them immediately following the meeting.

Monitoring and review

If, after monitoring during the review period, performance improves to the required standard, no further action will be necessary. The manager must inform the employee of the satisfactory outcome of the review in writing, and send a copy of this letter to their HR Officer so that it can be placed on the employee's personal file. It should be noted at this stage, however, that it is expected that the individual will sustain this level of performance and managers should continue to hold regular performance management meetings with the individual to discuss their ongoing performance.

Where performance does not improve, or where there is some improvement but the required standard is still not reached, the manager may consider a further review period or consider more formal action.

No formal action will be taken against a trade union representative under this Policy until the regional trade union officer has been informed.

8. FORMAL ACTION

Where the manager believes that a more serious capability issue exists or where persistent poor performance has not been adequately addressed by the informal action, he/she should speak to their HR Officer before pursuing formal action.

The HR Officer will review all documentation and discuss the matter further with the manager. Where it is agreed that further formal action is required, a letter inviting the employee to attend a formal meeting with their Line Manager will be issued. This letter will be sent by HR on behalf of the manager at least 5 working days in advance of the meeting and will include:

- The reason for the meeting.
- The name of the manager who will conduct the meeting.
- 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.

The employee has the right to be represented by a trade union representative or work colleague at all formal stages and the Line Manager should actively encourage the employee to take up their right to representation.

The meeting will be attended by the Line Manager, employee, HR Officer and trade union/work colleague representative if requested. At this meeting the manager will:

- Set out the standard of work performance expected from the employee in the area(s) under consideration.
- Explain how the employee's performance has fallen short of what is required and the impact this has on service delivery.
- Confirm all informal measures taken to date and how these have failed to improve performance to the level required.
- Provide the employee with an opportunity to explain and/or give reasons why the manager should not consider that performance has been poor.

- Discuss the way forward and ensure suitable targets and action plans are drawn up that specify the review period, additional training or supervision, changes in working arrangements or practices, provision of equipment or facilities, referral to an other or other agencies or any other measures being taken to support the employee to improve their performance.
- Set a review date (maximum of 3 months from date of meeting) which allows for regularly updating the employee on progress being made and gives the employee a reasonable period of time during which the required improvements must be made.
- Inform the employee that if they fail to reach the required standard during the course of the review period, further formal action may be taken.

The manager should make a note of the meeting (see Template 1: Record of informal/formal meetings in the Manager's Toolkit). Copies of this and the action plan should be signed by the employee at the end of the meeting to evidence that they agree to the content of the notes and the objectives set out in their action plan. Copies of this documentation will be sent to them immediately following the meeting.

After the meeting, the manager must confirm the action to be taken and inform the employee in writing of the outcome of the meeting immediately. This letter will state:

- The area(s) where improvement is required.
- The level of improvement required and/or required standard to be achieved.
- The measures that will be made available to ensure that the employee can reach this level, (for example, training or supervision).
- Any other action that will be taken by the manager or employee to help resolve the situation.
- The consequences if performance does not reach a satisfactory level within the stated review period.

The manager should ensure that any further training or assistance offered is made available and the employee's progress is closely monitored by conducting regular one to one meetings throughout the review period. Performance should be assessed as objectively as possible and as often as is considered appropriate. In a job where there are few and simple tasks, a period of days may be reasonable. Where the job is complex, and improvements cannot be assessed over a short period, a review period of several weeks, or longer, may be necessary.

The employee must be kept informed of his/her progress at regular one to one meetings. At these meetings the employee's action plan should be reviewed and performance against each objective should be discussed. If performance fails to reach an acceptable level, the manager should inform the employee and give them an opportunity to explain why they have failed to perform to the level required.

If performance is assessed as satisfactory at the end of the review period, the manager should sign off the employee's action plan and confirm this in writing. A copy of this letter will be placed on the employee's personal file. It should be noted here that it is the responsibility of the employee to maintain this level of performance without the need for close supervision or personal action plans beyond this process.

If some improvement has been made, the manager may decide to extend the review period and may further develop the individual's action plan to address the performance issue. The employee should be left in no doubt at this stage that failure to reach a satisfactory level by the end of the review period could result in further action being taken, including dismissal on grounds of capability.

If, however, performance has not reached the required level at the end of the review period, or earlier, if there is clearly no improvement or even deterioration in performance during the review period, the manager should refer this issue to the Chief Officer for a formal hearing, which may result in dismissal on grounds of capability.

9. INABILITY/REFUSAL TO ACCEPT A CAPABILITY ISSUE EXISTS

In some cases, the employee may not accept that a performance problem exists. This may happen at any stage during the process. Where this is the case, the manager should still:

- Inform the employee of the consequences of failing to reach the required standards of performance.
- Determine the period within which improvement is expected.
- Set out the support the employee will be given to help them improve their performance.

If the employee refuses to accept and respond to offers of help, and performance does not improve to the level required, it may be necessary to consider the future employment of the employee before the end of the review period.

10. REFERRAL TO THE CHIEF OFFICER

In instances where the required improvement has not been reached and the continued employment of the employee is in question, this should be referred to the Chief Officer and a formal hearing should be instigated. The Chief Officer must be provided with the following details:

- The area(s) where the employee has failed to meet the required performance standard.
- The consequences for the immediate service area of the employee's under performance.

- The action taken to assist the employee to meet the required level of performance.

The Chief Officer will arrange a hearing and the employee will be informed in writing, with not less than 5 working days notice of:

- The date and time of the hearing.
- The purpose of the hearing.
- The right to be represented by a trade union representative or work colleague.
- That a possible outcome of the hearing, if the employee is held to be unable to perform their duties to the required standard is dismissal from the Council's service.

Both manager and employee should attend the hearing and may produce documentary evidence and call witnesses.

All documentation must be exchanged at least 2 working days prior to the hearing.

The procedure to be followed at the Capability Hearing is attached at Appendix 1.

The possible outcomes of this stage are as follows:

- The Chief Officer may find that the individual's performance is acceptable and no further action is required.
- A decision is made not to dismiss the individual but to find the individual suitable alternative employment within the immediate service area. Such a decision would only be made where the individual has worked in a similar role previously and has demonstrated that they are capable of fulfilling the role (see 10.1).
- A decision is made to dismiss the individual on the grounds of capability (see 10.2).

It should be noted here that suitable alternative employment is NOT the same as redeployment. The individual will NOT be placed in the redeployment pool and any suitable alternative employment will be identified by and offered at the discretion of the Chief Officer.

10.1 Suitable Alternative Employment

Where a suitable vacant position has been identified within the immediate service area and is, in the circumstances, considered appropriate by the Chief Officer, the employee may be offered the vacant post subject to a trial period not exceeding six weeks. It should be made clear at this point that no pay protection will be attached to the offer of suitable alternative employment.

The employee will be given 5 working days to consider this offer of suitable alternative employment. In the event that the trial period fails, the reasons for failure will need to be clarified in writing to the Chief Officer by both the employee and/or the Line Manager of the vacant post (see Appendix 2). The Chief Officer will then determine the subsequent course of action, which may include dismissal on grounds of capability.

If the employee refuses this offer of alternative employment, then they will be dismissed on the grounds of capability and their notice period will begin with immediate effect.

In either case, the employee must be advised that they have the right to appeal.

10.2. Capability Hearing

Where the outcome of the hearing results in a decision to dismiss on grounds of capability, the employee must be advised that they have the right of appeal against this decision and, should they wish to exercise this right, they should write to the Director of Human Resources within 5 working days of receipt of the letter confirming the decision (see Appendix 3).

11. **EVALUATION OF THE ARRANGEMENTS TO ADDRESS CAPABILITY ISSUES**

Where capability issues have been identified and addressed, it is essential that this information is fed back to the Human Resources Division. This information can then be used to assess the effectiveness of the arrangements, and to identify areas where achievement of the required level of performance has been hindered by factors other than the employee's capability. The person who dealt with the final stage of the process should complete the evaluation form (see Appendix 4), that is, informal stage – Line Manager, formal stages – Line Manager, hearing – Chief Officer.

The completed form should be forwarded to: Human Resources, Ty Elai, Dinas Isaf East Industrial Estate, Williamstown, CF40 1NY, under confidential cover.

THE CAPABILITY HEARING PROCEDURE

INTRODUCTION

The Hearing Officer, at Chief Officer level, should introduce all parties and explain the purpose of the hearing. The names of any witnesses being asked to attend should be recorded and all documentary evidence being presented should be verified.

THE MANAGEMENT PRESENTATION

The manager will present his or her case, beginning with an opening statement outlining the reasons for bringing the case. Questions may be asked of the manager, on the opening statement, in the following order:

- Employee and/or their representative.
- Hearing Officer.
- The manager may then call his or her witnesses and ask questions of them. The witness(es) can then be questioned by the other parties in the order outlined above.

THE EMPLOYEE'S PRESENTATION

- The employee or representative will present the response to the management presentation.

Questions may be asked of the employee in the following order:

- Presenting manager.
- Hearing Officer.
- The employee or representative will then call their witness(es) and ask questions of them. The witness(es) will then be questioned by the other parties in the order outlined above.

Once each party has completed their questioning, the witness(es) should not be recalled. The Hearing Officer, however, retains the right to recall any witness(es) should further clarification of any issue be required. Where this happens, all parties should be recalled to the hearing.

SUMMING UP STAGE

Each party will have the opportunity to sum up, with management presenting their summary first. No new arguments or evidence may be introduced at this stage.

The Hearing Officer will then ask both parties to withdraw and will come to a decision based on the evidence presented.

The decision will normally be announced orally, as soon as possible, following the conclusion of the hearing, and the decision, together with the reasons, will be confirmed to the employee in writing within 5 working days of the hearing. The letter will also inform the employee of any appeal rights they may have, including the time limits within which they have to register their appeal. A copy of this letter should be placed on the employee's personal file.

An appeal against a decision not involving a dismissal should be directed to the appropriate Group Director.

Where the outcome of the hearing results in a decision to dismiss on grounds of capability, the employee must be advised that they have the right to appeal and, should they wish to exercise this right, they should write to the Director of Human Resources within 5 working days of the receipt of the letter confirming the decision. The letter of appeal must outline the grounds for appeal. This appeal will be to the Appeals/Employee Appeals Committee. This is the final level of appeal.

APPENDIX 2

SUITABLE ALTERNATIVE EMPLOYMENT TRIAL PERIOD REVIEW

Employee Name:

Line Manager Name:

Group:

Division:

Alternative Post Title:

Effective Date of Alternative Employment:

Trial Period End Date:

Standard of Work

Satisfactory

☐

Unsatisfactory

☐

Line Manager Comments / Recommendations

(These must be based upon the expected competencies and role requirements identified at the initial meeting on commencement of the suitable alternative employment.)

Actions Required

Employee Comments

Support/Actions Required

Manager
Has the trial period been successful?
Yes <input type="checkbox"/> No <input type="checkbox"/>
If the suitable alternative employment trial has been deemed unsuccessful please state the reasons below:

Employee
Has the trial period been successful?
Yes <input type="checkbox"/> No <input type="checkbox"/>
If the suitable alternative employment trial has been deemed unsuccessful please state the reasons below:

Action Required & Date

Employee Signature/Date: _____

Manager Signature/Date: _____

THE APPEAL HEARING

Any documents, including the statements of case, must be presented by both sides to the Director of Human Resources/Chief Executive/Group Director at the earliest opportunity prior to the hearing. The notes of the first hearing will form part of these documents and will be relied on as an accurate record of the hearing. If the appellant has any concerns with these notes, they should inform the Director of Human Resources prior to the appeal hearing taking place.

The Director of Human Resources/Chief Executive/Group Director will arrange for both parties to receive relevant documentation 10 working days prior to the hearing. Arrangements will also be made for the members of the Appeals/Employee Appeals Committee or Nominated Officer to review the documentation prior to the date of hearing.

If the date of the hearing is inconvenient for either side, then one postponement is allowed for both parties. If the appellant is unable to attend the re-arranged hearing, it may be heard in their absence. The appellant will however have the right to make written representations and to have their chosen representative present.

No new evidence will usually be introduced at this stage without the leave of the Committee. Witnesses that were called for the original capability hearing will not automatically be invited to the appeal hearing; therefore it is the responsibility of both parties to call any witnesses they feel will support their case at the appeal. The procedure for hearing the appeal is as follows:

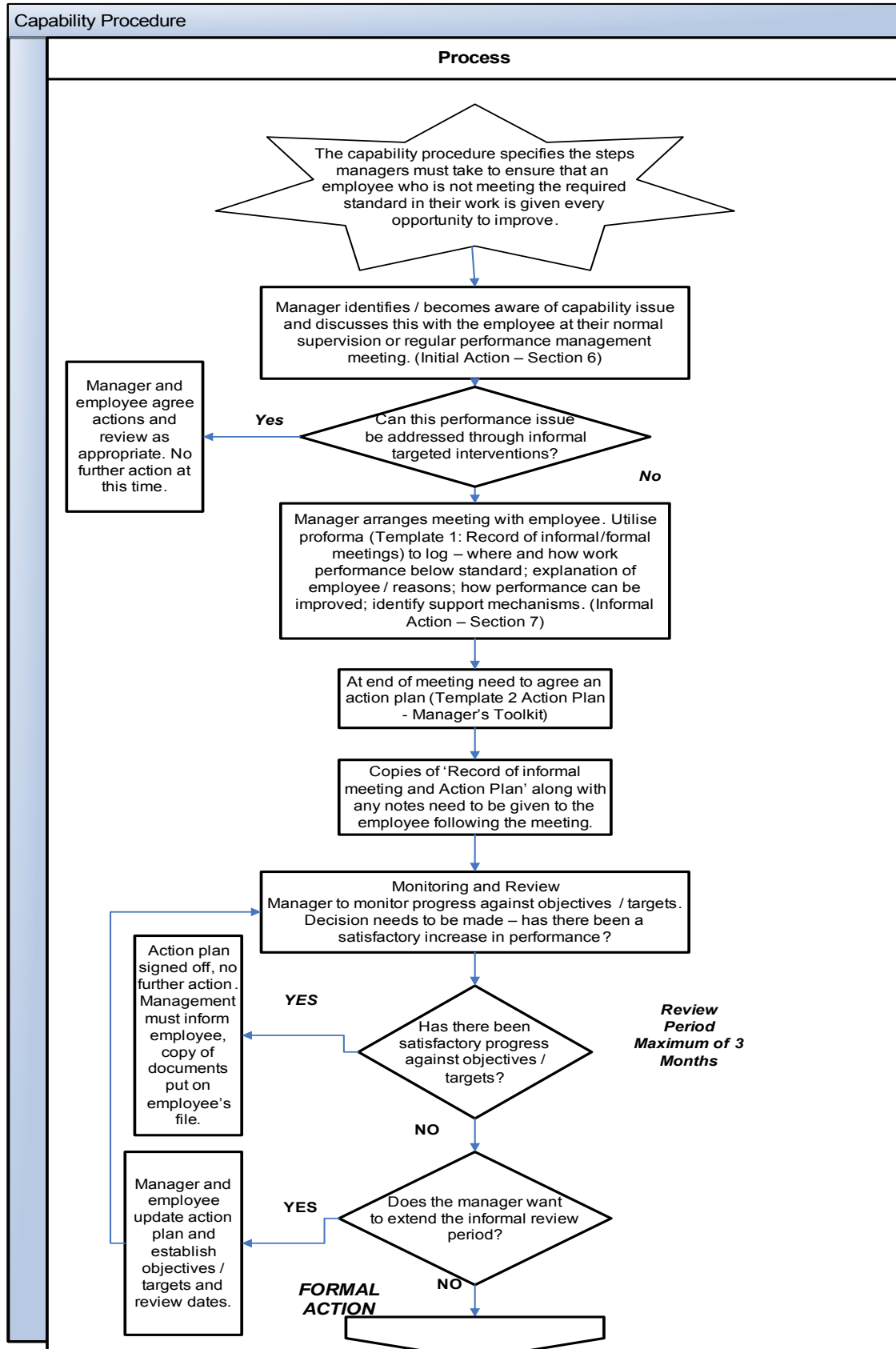
- The Chairperson of Appeals/Employee appeals Committee should introduce the panel members. The Chairperson will also introduce the advisor(s) to the committee and confirm that they will be present during the appeal hearing to provide procedural advice to members of the panel.
- The Chairperson will request both parties to introduce themselves and any representatives, which are attending the hearing. Representatives will be requested to confirm the capacity in which they are attending the hearing i.e. trade union official or work colleague.
- The Council's representative(s) will put the management case and may call witnesses.
- The employee and his/her representative will have the opportunity to ask questions of the Council's representative(s) and any witnesses he/she has called.
- The employee and/or representative will put his/her case and may call witnesses. They may confer. The representative may not answer questions on behalf of the employee nor prevent him or her from speaking. The representative must not address the hearing if instructed by the employee not to do so.

- The Council's representative(s) will have the opportunity to ask questions of the employee and any witnesses he/she has called.
- The Chief Executive, Group Director, Director of Human Resources or Chairman of the Appeal/Employee Appeals Committee (or other Panel Member) may ask questions of any party and call for further information to clarify matters. If, as a result of questioning, new evidence is brought out, both parties will be given an opportunity to comment, and if necessary, to seek an adjournment. The decision on whether to adjourn, for how long and what the expected outcome of the adjournment will be is at the discretion of the Chairman. Should it be necessary to adjourn, then both sides will be asked to withdraw.
- The Council's representative(s) will have the opportunity to sum up their case.
- The employee and/or his/her representative will have the opportunity to sum up his/her case.
- The parties to the case will withdraw from the hearing and the Chief Executive, Group Director, Director of Human Resources or Appeal/Employee Appeals Committee Panel will consider the evidence and make a decision.
- The decision will normally be announced orally as soon as possible following the conclusion of the hearing and the decision, together with the reasons, will normally be confirmed in writing within 5 working days of the hearing.
- If the decision is to reinstate the employee, the letter must set out clearly the terms of the reinstatement.

CAPABILITY PROCEDURE EVALUATION FORM

Division:	
Service area:	
Job title and grade of post held by employee:	
Briefly describe the areas identified where the level of performance is not acceptable:	
Briefly describe the measures taken to support the employee to achieve and maintain the required standards:	
At what stage of the procedure were the capability issues resolved? e.g. informal discussion stage	
What parts of the procedure were most helpful?	
What parts of the procedure were least helpful?	
Was the achievement of the required level of performance hindered by factors other than the employee's capability? e.g. unavailability of suitable learning opportunities	
Yes/No If yes please provide details:	
Any additional comments you would like to make:	
Signed:	Date:
Name (please print):	Title of post held:

CAPABILITY FLOWCHART



Process

