

# Capability Procedure

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## **1. Purpose**

- 1.1 The primary aim of this procedure is to provide a framework within which managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary. It supersedes all local protocols relating to the staff to which it applies.
- 1.2 Employees will not normally be dismissed for performance reasons without previous warnings. However, in cases of gross negligence dismissal without previous warnings may be appropriate under the disciplinary procedure.

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- 1.3 All issues under this policy must be dealt with speedily, with no unreasonable delays to meetings, decisions or appeals. Reasonable advance notice must be given for any planned meetings and adequate time for preparation should be afforded to the employee.

## **2. Scope of the Policy**

- 2.1 This policy and procedure applies to all employees of Leicester City Council, with the exception of teaching staff in schools but including schools support staff. Where no separately negotiated policy exists, governing bodies may make appropriate amendments where governance/management and practical application so require.
- 2.2 In relation to Chief Officers, where there is a conflict between this procedure and the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities, the latter shall prevail.

## **3. What is covered by the policy?**

- 3.1 There will be times when employees do not perform at the levels required by the council. This policy is used to deal with such matters of poor performance. It does not apply to cases involving ill health, proposed redundancies or misconduct. In those cases reference should be made to the appropriate policy or procedure.

## **4. Confidentiality**

- 4.1 The council's aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 4.2 The employee, and anyone accompanying them, must not make electronic recordings of any meetings conducted under this procedure unless as a reasonable adjustment under the Equality Act 2010, in which case advance notification should be given by the employee. In any event, a note of any meetings under this procedure will be taken. Notes taken during informal action will be discounted for the purposes of formal action/sanction under this procedure.

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## **5. Informal action**

- 5.1 In the first instance, performance issues should normally be dealt with informally between you and your line manager as part of day to day management. Regular supervision between manager and employee will

facilitate early discussions over any performance concerns. The initial approach should be to take a constructive and problem-solving approach to achieving improved work performance. Managers should take informal action as soon as they become aware that an employee is struggling to achieve or sustain expected levels of performance. Early intervention at the informal stage may help resolve problems earlier, without recourse to formal action.

5.2 Informal discussions may help to:

- (a) clarify the required standards;
- (b) identify areas of concern;
- (c) establish the likely causes of poor performance, including any mitigating circumstances, and identify any training needs or additional support which may be required;
- (d) Understand and agree the actions you need to take to rectify the situation.

## **6. Disabilities**

6.1 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. The council may also consider making adjustments to this procedure in appropriate cases.

6.2 If you wish to discuss this, or inform the council of any medical condition that you consider relevant, you should contact your line manager or a member of Human Resources. The Human Resources Service will also be able to signpost employees to external support agencies, such as Access to Work, where appropriate.

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## **7 The Formal Procedure**

7.1 The formal procedure should be used in any cases where an earlier informal process has not resulted in a satisfactory improvement.

7.2 If there are concerns about your performance, your manager will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve obtaining and analyzing information from a number of sources to evaluate your performance.

7.3 For any member of staff with further education teaching commitments, the observation and grading of teaching is a regular part of professional practice. This practice will not of itself form any part of the capability process. However,

where issues are highlighted of a capability nature within that practice, they may be taken forward within this procedure.

- 7.4 Prior to any meeting under this formal procedure you will be advised in writing of your manager's concerns over your performance, the reasons for those concerns, and the likely outcome if your manager decides after the meeting that your performance has been unsatisfactory. You will usually also be provided with a summary of any relevant information gathered as part of the procedure and any written evidence that your manager may be relying upon. This may include witness statements. You will also be advised of the time and location of the meeting and your right to be accompanied as set out in paragraph 7.5 below.
- 7.5 You may bring a representative to any formal meeting under this procedure. The representative may be either a trade union representative or a colleague.

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## **8 Stage One Meeting**

- 8.1 If your manager considers that there are grounds for use of the formal procedure regarding poor performance, you will be asked to attend a stage one capability meeting. Your manager will send you written notification as set out in paragraph 7.4.
- 8.2 If your manager concludes at a stage one meeting that your performance is unsatisfactory you will usually receive a first written warning as set out in paragraph 11.2 and 11.3 below.
- 8.3 A first written warning will remain live for six months from the date of written notification. After this time it will be disregarded for the purposes of the capability procedure.

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## **9 Stage Two Meeting**

- 9.1 If your performance does not improve within a review period, or if there is further evidence of poor performance whilst your first written warning is still active, your manager may decide to hold a stage two capability meeting. Your manager will send you written notification as set out in paragraph 7.4.
- 9.2 If your manager concludes at the stage two meeting that your performance is unsatisfactory you will usually receive a final written warning as set out in paragraphs 11.2 and 11.3 below.

9.3 A final written warning will normally remain active for 12 months from the date of written notification. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.

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## **10 Stage Three Meeting**

10.1 Your manager may decide to hold a stage three capability meeting if they have reason to believe:

- (a) your performance has not improved sufficiently, despite being offered appropriate training and support, within a review period set out in a final written warning;
- (b) your performance is unsatisfactory, despite being offered appropriate training and support, whilst a final written warning is still active.

10.2 Your manager will send you written notification of the meeting as set out in paragraph 7.4.

10.3 Following the meeting, if your manager finds that your performance is unsatisfactory; your manager may consider a range of options including:

- (a) dismissing you;
- (b) finding you alternative work, where appropriate. This may, at management's discretion, be at a lower grade.

10.4 Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case you may be dismissed without notice, or any pay in lieu, under the council's disciplinary procedure.

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## **11 Procedure at Capability Meetings (Stage 1, 2 and 3)**

11.1 The aims of a capability meeting will usually include:

- (a) Setting out the required standards that your manager believes you may have failed to meet.
- (b) Allowing you to ask questions and respond to the issues raised.
- (c) Discussing possible causes of the poor performance.
- (d) Discussing why steps already taken under this procedure have not led to sufficient improvement.

- (e) Discussing whether further assistance, such as additional training or supervision, may improve performance.
- (f) Discussing targets for improvement and a timescale for review.
- (g) The person to whom you should appeal.

11.2 Any warnings given under this procedure will be in writing and will explain your manager's reasons for it. Each warning will usually also detail:

- (a) the areas in which you have not met the required performance standards.
- (b) Targets for improvement.
- (c) Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- (d) A period for review.
- (e) The consequences of failing to improve within a review period, or of further unsatisfactory performance.
- (f) The duration of the warning.

11.3 You will usually receive the written warning within five working days of the meeting. Where possible your manager will also explain this information to you in person.

11.4 During any review period your performance will be monitored throughout. At the end of the period:

- (a) if your line manager is satisfied with your performance, you will be advised of this in writing and be encouraged to maintain the improvement. No further action will be taken.
- (b) if your line manager is not satisfied, you will be informed in writing and the matter may be progressed to the next stage under this procedure.
- (c) if your manager feels that there has been a substantial but insufficient improvement, the review period may be extended. You will be notified in writing if a review period is to be extended.

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## **12 Appeals**

12.1 If you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the person identified within the outcome letter within five working days of the date on which you were informed in writing of the decision.

12.3 The appeal will be heard by a manager with no prior involvement in the case who will normally be more senior than the manager giving the capability warning, or Elected Members in the case of dismissal.

12.4 You will be given written notice of the date, time and place of the appeal meeting.

12.5 The outcome of an appeal may be one of the following:

- (a) Uphold the sanction;
- (b) Overturn the sanction;
- (c) Impose a lesser sanction.

12.6 You will be informed in writing of the final decision as soon as possible, usually within one week of the appeal meeting. Where possible you will be advised of the decision in person. There will be no further right of appeal.

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### **13. Review**

13.1 This procedure will be reviewed and updated in line with relevant legislation, case law and emerging good practice.

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#### Document Control

Implementation Date	Author	Summary of Changes	Date to be reviewed
4 November 2013	Paul Atreides Steph Holloway	Revised	