

## Capability Policy

**Waverley aims to help and encourage all employees to achieve and maintain high standards of performance and attendance by actively managing staff through clear processes and procedures. The Policy aims to ensure fair, equitable and consistent treatment of staff whose performance is below the required standard because of a lack of capability.**

For issues of attendance, this policy should also be read in conjunction with the Absence Management Policy.

### Overview

The policy and procedure deals with situations where:

- an employee's health makes it no longer possible for them to carry out their work to the required standard,
- and/or where an employee is unable to maintain a satisfactory level of work performance,
- and where this is not a matter of misconduct.

As described above, this policy aims to set Waverley's performance and attendance standards. If performance or attendance standards are not met, the option to dismiss remains, as a last resort. Under law, capability (defined either as performance or attendance related) constitutes a fair reason for dismissal.

NB:

- The procedures for Redundancy, Capability and Discipline for the Head of Paid Services are covered by the National Conditions of Service Handbook for Local Authority Chief Executives.
- Section 151 Officer and Monitoring Officer are not covered by the processes below. The procedures for Capability and Discipline for these posts are covered by the National Conditions of Service for Local Authority Chief Executives.
- Directors are not covered by the processes below and are covered by the National Conditions of Service for Local Authority Chief Officers.

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### PROCEDURE

- Employees can expect to have regular discussions with their manager so that standards of performance or attendance can be discussed and reviewed.
- Any shortcomings in the employee's performance or attendance will be investigated and raised as promptly as possible with them and the underlying reasons discussed, with the opportunity to state their case before any decision is made.
- The investigation will gather factual, measurable evidence.
- Employees will receive appropriate support, coaching, training and resources to help them achieve and maintain a satisfactory level of performance within an agreed timeframe.
- The employee will have the right to be accompanied by a work colleague or trade union representative at all formal stages of the procedure.

- If the employee or accompanying person cannot attend a formal meeting, another meeting will be arranged, to take place within five working days of the original date. This timescale can be extended with mutual agreement.
- The employee will receive a written explanation of any action taken. If this is a warning, the employee will also receive an explanation of what improvement is expected, within what timescale, and when and how their performance/attendance will be reviewed and the consequence of the required improvement not being met.
- If an employee has difficulty reading, or if English is not their first language, the manager will explain the content of any written correspondence to them orally and/or use a translation service if appropriate.
- If the employee has a disability, all elements of the procedure will take this into account, including whether any reasonable adjustment is needed.

### **Powers to Take Action under the Capability Procedure**

Action under this procedure may be taken by the following levels of manager supported Human Resources.:

(Please read the procedures detailed below before taking action)

**Written Warning** – may be given by a Line Manager to the employee subject to the capability procedure.

**Final Written Warning** - may be given by the relevant Head of Service to the employee subject to the capability procedure.

**Dismissal** - may be given by a Strategic Director in consultation with the Chief Executive to the employee subject to the capability procedure..

The Leader of the Council and the Portfolio Holder for Organisational Development will be informed of any formal action taken at the earliest opportunity.

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### **Initial Review**

The day to day supervision of employees is outside the scope of this procedure. It is the responsibility of all managers to monitor their staff and ensure that employees understand what is expected of them with regard to both work performance and attendance standards.

The first stage in dealing with poor job performance or attendance is to determine whether the matter is one of capability or misconduct. The Capability procedure is used where the employee is clear about what is required of them, has received all appropriate training and support but still cannot achieve a satisfactory level of performance or attendance through no fault of his/her own, for example as a result of poor health.

If on the other hand, the employee fails to reach the required standard of performance or attendance as a result of negligence, deliberate misconduct or deliberate lack of effort, this will be dealt under the Disciplinary Procedure as misconduct.

## Performance (Formal: Stage One)

When the manager is concerned about an employee's performance, the manager should gather factual, measurable evidence and then meet with the employee to:

- discuss where the employee is not meeting the required performance standard, with specific factual, measurable examples as evidence
- discuss what action is required to remedy the situation
- set specific targets and a timescale for improvement
- set a timescale for review
- explain that the formal process will apply if the performance or attendance standard is not achieved.

The manager will then give the employee an Improvement Action Plan in writing which will be regularly reviewed and assessed by the manager in conjunction with the employee. A copy of this Action Plan will be kept on the employee's personal file.

If the required performance standards are met, the manager will confirm this with the employee in writing and a copy will be kept on the employee's personal file.

If the required standard of performance is not met, the matter will be dealt with under the formal stage two of this procedure.

## Attendance

Issues of absence due to sickness or disability will be dealt with through the Absence Management Policy. The formal stage addressing capability will start at Stage Two of this Capability Procedure (i.e. first written warning).

## **(Formal) Stage Two – First Written Warning**

This stage applies where an improvement has not been achieved through the initial review. The line manager will write to the employee to detail the nature of the poor performance and the reasons why this is not acceptable.

The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague.

At the meeting, the manager will discuss their concerns with the employee and confirm the required performance standards with the member of staff and a time period over which improvement will be expected.

The manager will also confirm how the individual's performance will be monitored and when review(s) will take place.

The manager will warn the employee that a failure to improve within the required timescale could result in a final written warning and ultimately, dismissal.

The employee will be advised of their right of appeal.

This information will be confirmed in writing by the manager to the employee as a first written warning no later than ten working days after the meeting.

If the employee does appeal, an appeal meeting will be held and the employee will again have the right to be accompanied by a trade union representative or work colleague.

The employee will be informed in writing of the decision of the appeal.

NB: Where an employee is persistently unwilling or unable to attend a meeting, the Council will make a decision based on the available evidence, in the employee's absence.

A first written warning under this procedure will remain 'live' for six months, i.e. the performance standard set is to be achieved during that six month period. This may be extended in appropriate circumstances (e.g. where a period of training is required which will not be completed within six months or where a 12 month period is required to monitor sickness absence).

A copy of the letter will be kept on the employee's personal file until the process is no longer 'live' (i.e. the performance standard has been met) and thereafter will be removed and retained on a strictly confidential management file but will not be further used in any formal process.

If the employee's performance improves adequately within this period, then the process will terminate at this stage. The manager will confirm this with the employee in writing.

If performance remains unsatisfactory, then Stage Three of this procedure (final written warning) will be invoked by the manager. If it becomes apparent that the performance target has not been met, e.g. in the case of attendance, the next stage of the procedure would be invoked before the end of the 6 (or 12) month period.

### **(Formal) Stage Three – Final Written Warning**

This stage applies where:

- the performance or attendance standard has not been met, due to a lack of capability, within the required timeframe after a first written warning. When an attendance target is not met, the full time period set to achieve the target does not need to apply.
- or, a demonstration of a lack of capability is serious enough to warrant applying stage three of this procedure.

The Head of Service (or designated representative) will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable. The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague.

At the meeting, the Head of Service (or designated representative), supported by Human Resources, will discuss their concerns with the employee and confirm the performance or attendance standards with the member of staff and a time period over which improvement will be expected. The Head of Service will also confirm how the individual's performance will be monitored and when review(s) will take place.

The Head of Service will warn the employee that a failure to improve within the required timescale could result in dismissal.

The employee will also be advised of their right of appeal. This information will be confirmed in writing to the employee by the Head of Service within ten days of the meeting.

A final written warning under this procedure will remain 'live' for twelve months, although this may be extended in exceptional circumstances such as where further concerns are raised about the employee's performance or attendance but these are not sufficiently serious to invoke Stage Four of this procedure (dismissal, demotion or redeployment) and the Council is able to reasonably expect that an extended period will enable the employee to reach the required standard of performance.

A copy of the letter will be kept on the employee's personal file until the warning is no longer 'live' and thereafter will be removed and retained on a strictly confidential management file but will not be further used in any formal process.

If the employee's performance improves adequately within this period, then this will be confirmed in writing by the Head of Service and the process will terminate at this stage.

If performance or attendance remains unsatisfactory, then Stage Four of this procedure will be invoked by the Head of Service. If it becomes apparent that the performance target has not been met, e.g. in the case of attendance, the next stage of the procedure would be invoked before the end of the 12 month period.

#### **(Formal) Stage Four – Dismissal (or demotion or redeployment if available)**

This stage applies when:

- a promoted employee is not capable of meeting the required standard of performance despite support and training, or having refused support or training (consider demotion).
- performance or attendance still fails to improve after a final written warning, or where performance or attendance levels have worsened before the end of the review period.
- or, a demonstration of a lack of capability is serious enough to warrant applying stage four of this procedure.

The Director (or designated representative) will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable.

The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague.

If the Director (or representative) is not satisfied that the employee's level of performance or attendance will improve within a reasonable timeframe, the employee will be dismissed with notice or, in exceptional circumstances where it is not possible for the employee to work their notice, a payment equivalent to their notice period. Alternatively, demotion to the pay grade paid prior the promotion, or lower or redeployment to an alternative post, at the

same pay grade or lower, may be considered as appropriate, at the discretion of the Council, if any suitable posts are available.

The employee will be informed in writing by the Director (or designated representative), as soon as possible, of:

- the reasons for decision, the date on which their employment will terminate,
- or that demotion or redeployment will apply, giving the detail of the terms and conditions that will apply and the possible consequences of refusing the offer,
- and of their right to appeal.

NB: If the decision is 'demotion', the employee's salary will not be protected and the salary for the post will apply.

If the decision is 'redeployment', the procedure detailed in the Redeployment Policy will apply.

If the decision is dismissal, the employee will be given notice or, in exceptional circumstances, pay in lieu of notice.

### **Investigation (Capability)**

Before disciplinary action is taken, an investigation will be carried out in order to gather factual, measurable evidence.

In many cases, the manager will carry out the investigation, with advice and support from their HR Business Partner.

In more complex or serious cases, the investigation will be carried out by an independent manager nominated by the employee's Head of Service together with an HR Business Partner (or their nominated representative). The Council reserves the right to nominate any other person to conduct the investigation where it is considered appropriate.

The person leading the investigation is known as the Investigating Officer.

The employee will be notified in writing that an investigation is to be undertaken and that its purpose is to establish the facts and whether there is a case to be progressed under the Capability Procedure.

The investigatory interview is not disciplinary action. The employee has the right to be accompanied by a trade union representative or work colleague.

The investigation will be conducted as quickly as possible and, in most cases, it will be expected to be completed within 20 working days. If this is not the case, the employee will be informed and given an explanation for the delay and informed when the investigation is expected to be completed.

As soon as is reasonably practicable after the conclusion of the investigation (normally within 5 working days), the employee will be notified in writing that the investigation is complete. The Investigating Officer will decide whether, on the evidence gathered, whether there is a case to be progressed under the Capability Procedure.

## **Appeal Procedure (Capability)**

### **Stage One or Stage Two (Appeal)**

If an employee wishes to appeal against formal action taken against them under this procedure, they must write to the manager who conducted the disciplinary meeting, with specific reason(s) for the appeal and within ten working days of being notified of the formal outcome of the meeting.

The purpose of the appeal is not to re-hear all the evidence presented at the initial capability meeting but to consider the employee's specific grounds for appeal and decide whether the initial decision taken was reasonable and consistent with other decisions made by Waverley in similar circumstances.

The employee's Head of Service will identify another Senior Officer, normally either a Head of Service or Strategic Director, who has not previously been involved in the detail of the case or the capability meeting, to chair the appeal on behalf of Waverley and give a final decision.

The employee will be invited to an appeal meeting which will be arranged as soon as is reasonable practical – usually to take place within one month of the receipt of the appeal. They will be informed of their right to be accompanied by a work colleague or trade union representative.

At the appeal meeting, the Senior Officer chairing the appeal will consider the information presented at the original meeting, together with any new evidence presented, and will allow the employee to comment on this. Any documentation produced as evidence should normally be exchanged at least three working days prior to the hearing date.

The employee will present their case first and once both sides have presented their case, the manager chairing the appeal and their adviser will adjourn to consider the decision.

The Senior Officer chairing the appeal can withdraw the penalty imposed and/or impose a less penalty, but can not increase the penalty.

The outcome of the appeal will be confirmed in writing, to the employee and copied to the relevant Head of service, by the Senior Officer chairing the appeal within five working days of the appeal hearing.

### **Dismissal (Appeal)**

Appeal against dismissal on grounds of capability should be made in writing by the employee, or their representative, to the Senior Officer within ten working days of receiving the letter terminating the employment. This letter must indicate the reason(s) for the appeal.

Within ten working days of the appeal letter being received, the Senior Officer, or his/her designated representative, will then arrange for an appeal meeting to be heard. The meeting will be held with the employee and, if the employee so wishes, their representative.

The appeal will be heard by the Senior Officer (or their representative) who has not been involved in the decision to terminate the employment, or the Chief Executive (or her representative), together with Human Resources.

On hearing the appeal, the panel may confirm the decision to terminate employment or amend the terms or decide to re-engage the employee from the date of the original decision to dismiss (so that there is no break in continuous service). The decision of the panel will be given at the meeting and/or in writing within three working days of the meeting.

There is no further right of appeal.

File: person policy/ capability