

## **CAPABILITY AT WORK PROCEDURE**

<b><u>Contents</u></b>	<b><u>Section</u></b>
Introduction	1
Scope & Definitions	2
General Principles	3
Equalities & Diversity	4
Management Guidance	5
Standard Setting Framework	6
1 <sup>ST</sup> Formal Meeting	7
Intermediate Meeting(s)	8
Final Meeting	9
Appeal Process	10
Appeal Submission Form	Appendix 1

## CAPABILITY AT WORK PROCEDURE

### 1. INTRODUCTION

1.1 The Council's Capability at Work Procedure was approved by General Purposes Committee in March 2009 and was updated by Corporate Committee on 27 September 2012.

1.2 The aim of the procedure is to enable managers to address sub-standard working with employees by putting in place clear standards and improvement measures so that performance can be raised to the required standards. All employees are provided with a copy of the procedure as part of their induction pack.

1.3 Integral to the Council's emphasis on service standards and quality services is the ability of employees to work to an acceptable standard.

1.4 Sub-standard working weakens service delivery and detrimentally affects morale within the workplace. It is therefore essential to address sub-standard working for the benefit of all parties and to do so at the earliest opportunity.

### 2. SCOPE AND DEFINITIONS

2.1 This procedure applies to all permanent Council employees, except those teachers directly employed by the Council and all staff appointed by schools operating under the Local Management of Schools, which have their own procedure and Directors/Assistant Directors or equivalent levels.

2.2 Employees who are unable to carry out their duties because of unacceptable levels of sickness absence or for health reasons which affects their ability to do their job are dealt with under the Council's Sickness Absence Monitoring & Control Procedure.

2.3 Employees serving their Probationary period will be subject to the Probationary Procedure.

### 3. GENERAL PRINCIPLES

1. Managers are responsible for setting and monitoring standards of work. It is their role to deal with sub-standard work immediately it becomes apparent.

## Haringey Council

2. As soon as concerns about the work standards are identified the manager should use the standard setting framework as outlined on page 5 to discuss these with the employee, either as part of a regular review meeting (1:1 or appraisal) or, separate meeting.
3. Employees must understand that if their standard of working falls below an acceptable standard, managers will seek to address this and the employee cannot raise a grievance as a result.
4. Managers have a responsibility to appropriately support employees whose work falls below standard. Employees have a responsibility to work at the standard expected and should do their best to meet that standard, responding to any corrective measures that are identified.
5. The manager must give a copy of this procedure to an employee when he/she decides to formally address sub-standard working under stage 1 of this procedure.
6. If at the First Formal Meeting it is determined that the employee is working well below the expected standard and this has as a serious consequence to the Council or to an individual client, then the Intermediate Stage can be omitted and a Final Meeting is instigated. Very serious error or omission where the Council could not risk a recurrence may be treated as gross misconduct.
7. There may be circumstances where a disciplinary/ grievance/ harassment & bullying case and a capability matter are related. In these circumstances it is normal for the processes to run in parallel with each other. However, there may be exceptions, depending on the circumstances of the case where one process is put on hold until the other process has been completed.
8. Where an employee is subject to the capability procedure and subsequently has a period of absence from work, then on the return to work of that employee the procedure will continue at the stage it was at before the employee commenced their absence.
9. Employees have the right to be accompanied by a trade union representative or work colleague at the First Formal and Intermediate Meeting(s) and have the right to be represented at the Final Meeting.
10. Timescales for improvement will be determined by the manager. These shall be reasonable and take into account the job role, working environment and the appropriate support to be given. As a guide a review period will normally be between 1-3 months depending on the nature and complexity of the job (note this timescale can be longer if deemed necessary e.g. to allow for agreed actions/training to be completed).
11. Where an employee's performance has not improved within the review period the manager will move to the next stage of the procedures.

## Haringey Council

12. Where the employee's performance has improved to an acceptable standard the manager will acknowledge the progress made, encourage the employee to sustain this and will continue to monitor their performance. Notes of this meeting must be kept and copied to the employee. If further concerns are identified at a later date (within a 12 month period of the last meeting) then the procedures will not revert back to the beginning.
13. If at any stage the desired level of achievement is reached then the manager will send the employee a letter to acknowledge this.
14. The manager can use his/her discretion and decide to conduct more than one Intermediate Meeting where they believe it to be appropriate.
15. The review of an employee's capability at all stages of the procedure would usually be carried out by the employee's line manager. However, it is not unusual for different levels of management to be involved. Where dismissal could be the outcome, the meeting must be conducted by a 1<sup>st</sup>, 2<sup>nd</sup> or 3<sup>rd</sup> Tier manager or, by a manager empowered by a Director and must be graded higher than the employee under review.
16. Where it is evident that the employee will not be able to improve their work standards to an acceptable level then relegation <sup>(1)</sup> or demotion <sup>(2)</sup> can be considered instead of holding a final meeting. This can only be considered if it is practical to do so (e.g. the manager has a suitable vacancy at a lower grade) and all parties are in agreement.

Note: <sup>(1)</sup> **Relegation** means being transferred to a different post with different duties on a lower grade or the same grade.

<sup>(2)</sup> **Demotion** means removal of duties in the same job that will result in no more than one grade lower.

### 4. EQUALITIES AND DIVERSITY

4.1 Capability cases will be monitored by gender, disability, ethnicity, religion, age and sexual orientation (religion & sexual orientation will be monitored separately).

### 5. MANAGEMENT GUIDANCE

5.1 Managers must read the 'Management Guidance – Capability Procedure' before taking action under this procedure. This document can be found on Harinet along with appropriate training courses.

### 6. STANDARD SETTING FRAMEWORK

6.1 The manager should explain why he/she is concerned about the employee's work standards and detail where he/she falls short of the expected standard. The impact on the service/organisation needs to be explained.

6.2 Once the Manager has explained why he/she is concerned, the employee should be given the opportunity to respond. If there is a need for the manager to clarify certain points, this should take place, especially if the employee does not immediately accept that his or her work is below standard.

6.3 The manager will have regard for the employee's work history and record, length of service, disciplinary record etc, and will take this into account when deciding on what action to take.

6.4 If, in the past, the standard of work has been totally satisfactory, it may be that the fall in standards is due to specific short term problems. Managers need to tactfully explore whether there have been any personal issues or other circumstances that have resulted in the fall in standards. If this is the case appropriate advice/support should be offered, with agreement to review the situation within a set timescale.

6.5 If the employee fails to offer an acceptable explanation for not reaching the expected standard of working, the manager needs to:

- a) Explain the employee's expected duties, including any timescales in which to carry them out. Confirm with the employee that he/she fully accepts these duties and the timescales,
- b) Explain the reasons why his/her work is considered to be below standard and agree the steps that need to be taken to bring the work back up to standard.
- c) Identify additional supervisory requirements that may be placed on the employee.
- d) Identify any training, development or other support that may help in raising the employee's standard of work and arrange for this to be provided at the earliest possible opportunity.
- e) Encourage the employee to improve his/her work standard.
- f) Advise the employee of the consequences of failing to respond positively.
- g) Advise the employee of the impact that their work performance is having on service delivery and their colleagues.

6.7 Notes of the meeting must be kept and copied to the employee along with a letter from the manager confirming the outcome of the meeting. The documents to be sent within 3 working days.

6.8 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

### 7. FIRST FORMAL MEETING

7.1 If the manager considers that there has not been improvement following the implementation of the measures set at the standard setting meeting the manager will arrange a meeting with the employee and their representative giving them at least 5 working days written notice. The letter should detail why he/she is concerned about the employee's work standards and, where available, enclose relevant documentary evidence to support both the original concerns and of subsequent failure to achieve the required improvement. Details of the support the manager has given the employee to date and in particular, the support that has been provided as identified at the standard setting meeting will also be provided. These might also include for example training records/1:1 notes/appraisal notes.

7.2 The employee or his/her representative should provide the manager with any of their supporting documentation they wish to be considered at the meeting at least 2 working days before the meeting.

7.3 Where possible, the employer should allow a companion (work colleague or trade union representative) to have a say in the date and time of a hearing. If the companion can't attend on a proposed date, the employee can suggest an alternative time and date so long as it is reasonable and is ideally not more than five working days after the original date.

7.4 At this meeting the manager will explain the concerns regarding the employee's performance, the impact this has on service delivery and their colleagues, the support offered to improve it and provide evidence of the subsequent failure to achieve the required improvement. Notes of the previous meetings and supporting documentation will be referred to.

7.5 The employee will be given an opportunity to respond during the meeting.

7.6 The employee will be advised of the improvement required and the timescale to achieve it. The employee will be invited to identify any additional support they believe might assist. The manager must encourage the employee to improve and offer any reasonable support or training that will assist this improvement (as per paragraph 5 of the standard setting framework). The manager will advise the employee that his/her performance will continue to be monitored and that this could result in further action in accordance with the capability procedure and ultimately dismissal if the required standard is not achieved on a sustained basis.

7.7 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

7.8 Notes of the meeting must be kept by the manager and copied to the employee along with a letter confirming the outcome of the meeting. The document(s) are to be sent within 3 working days with a copy sent to the trade union representative who accompanied the employee at the meeting.

### 8. INTERMEDIATE MEETING(S)

8.1 The manager may repeat the format of the First Formal Meeting and advise the employee that if there is not an appropriate improvement in their work performance within the agreed timescale then they will be referred for a Final Meeting which could result in their dismissal.

8.2 For guidance on review and monitoring timescales please refer to points 10, 11 & 12 in the general principles section.

8.3 It is possible to repeat this intermediate stage if further reviews are deemed necessary.

8.4 Notes of the meeting must be kept by the manager and copied to the employee along with a letter confirming the outcome of the meeting. The document(s) are to be sent within 3 working days with a copy sent to the trade union representative who accompanied the employee at the meeting.

### 9. FINAL MEETING

9.1 If any employee reaches this stage it will be because they have consistently fallen below the expected standards of work despite considerable effort by management to try to improve his/her standard.

9.2 The manager will arrange a final meeting with the employee and their representative giving them at least 10 working days written notice informing them of which Senior Manager will be chairing the meeting and that this meeting could lead to their dismissal.

9.3 The letter should detail why the manager is concerned about the employee's work standards and enclosing all the relevant documentary evidence to support the concerns (including the documentation from the previous stages), plus any documents detailing the support the manager has given the employee to date e.g. training records/1:1 notes/appraisal notes etc.

9.4 The employee or his/her representative should provide the manager with their supporting documentation at least 2 working days before the meeting.

9.5 At this meeting the manager should explain the actions taken to date and the employee/representative will have an opportunity to respond.

9.6 The Senior Manager chairing the meeting will then decide on the appropriate course of action:

## Haringey Council

- i) To dismiss the employee with notice on the grounds of capability. The appropriate Notice will normally be paid in lieu rather than worked.
- ii) To consider relegation as an alternative where it is a practical proposition.
- iii) To consider demotion for a specified period or permanently where it is a practical proposition.
- iv) To keep the situation under review for a defined period (no more than 12 months) at the end of which a decision will be taken on the appropriate course of action which could include dismissal.

9.7 Notes of the meeting must be kept and copied to the employee. A letter confirming the outcome of the meeting must be sent to the employee within 3 working days with a copy sent to the trade union representative who represented the employee at the meeting. If the decision was to dismiss, relegate or to demote then the letter needs to outline the employee's right of appeal and a template Appeal Submission Form enclosed.

### 10. APPEAL

10.1 An employee who is dismissed, demoted temporarily or permanently, or relegated shall have a right of appeal against the decision.

- Officer Level Appeals: Appeals against a decision other than dismissal will be a review of the case carried out by an appropriate manager who will be from outside the appellant's own Directorate.
- Member Level Appeals: Appeals against dismissal will be heard by a panel of 3 Members, who will review the case based on the information provided at the appeal review hearing.

10.2 An HR Adviser (and an adviser from the Legal team) will provide advice to both the member panel and to the officer reviewing the case. The individual is entitled to be represented (or accompanied) to an appeal hearing by either their trade union representative or a work colleague of their choice.

10.3 To lodge an appeal, the Appeal Submission Form (attached at Appendix 1) must be completed in full and sent to the Head of HR within 10 working days of the date of the letter confirming the decision of the capability hearing. An appeal may be lodged outside of this timeframe only if there are exceptional reasons for the delay. The final decision about whether or not to accept the appeal in such circumstances will rest with the Head of HR.

10.4 Failure to supply full reasons for the making the appeal will render the appeal suspended until they are supplied. The Head of HR will make the final decision as to whether the reasons are sufficient.

10.5 Where an appeal is lodged, HR will provide the transcript or notes of the original hearing when confirming receipt of the appeal. Where this is in the form of a



## **Haringey Council**

transcript the appellant shall be entitled to hear the audio recording in the event of a dispute about accuracy in transcription.

10.6 Appeal hearings will be electronically recorded to ensure an accurate record is captured. The appellant may raise an objection in advance of the hearing date as to why they don't want the hearing recorded. However, the appellant must be aware that a written note of the hearing may not be as accurate as an electronic record.

10.7 Only new evidence which has come to light since the original hearing took place and which may have a material effect on the final outcome may be introduced at the appeal stage. Any such evidence must be provided at the same time as other evidence (ie ten working days in advance of the hearing). Such evidence should only relate to the original capability issues and no additional ones.

10.8 Both parties will be expected to exchange any documents relating to the case at least ten working days in advance of the appeal. If management are using the same documents as those used at the service hearing they must confirm this to the appellant no later than ten days in advance of the appeal. Where management introduce new evidence at this point the appellant shall be entitled to submit additional evidence no later than five working days in advance of the appeal, such evidence shall be limited to having a direct relationship to the new management evidence.

10.9 Appeal hearings must be arranged within a reasonable period of time and ideally concluded before the employee's last day of service. However, where this is not possible, the hearing should be concluded within a maximum of 3 months from the date of the service hearing. The date of the appeal should be arranged in consultation with all parties. Flexibility will be expected from an appellant if a proposed date does not at first appear convenient and he/she must be prepared to change their arrangements to try to meet the proposed date. The appellant should be aware that the appeal may go ahead in their absence should they fail to attend without good reason.

### **10.10 Officer Level Appeals Process**

The review will be conducted by a more senior manager than the person who imposed the original sanction. If a 2nd or 1st tier manager made the decision another manager at the same level from outside the appellant's directorate may conduct the appeal. The Head of HR will nominate the reviewing officer.

10.11 The review may confirm the original sanction imposed or decrease it, but not increase it as it is not a rehearing of the case.

10.12 The reviewing manager will consider all documentation presented at the final hearing together with hearing notes, outcome letter and the appellant's grounds of appeal. Copies of these documents will be available to the appellant; to his/her representative and to the manager who made the original decision.

## **Haringey Council**

10.13 The manager reviewing the case will meet with the appellant and her/his representative and will then meet with the original hearing manager before making a decision.

10.14 The decision of the review manager will be confirmed to the appellant in writing, and the letter should usually be dispatched within 3 working days of the decision.

The decision of the reviewing manager is final.

### **10.15 Member Level Appeals Process**

An appeal against a decision to dismiss will be a review of the case, heard by 3 Members. If one Member is unable to attend the hearing, the appellant has the option on the day of continuing the hearing with a panel of 2 Members or requesting that the hearing be postponed until a panel of three members can be present to hear the case.

10.16 The manager presenting the case (normally the service manager who heard the final hearing) will present first. If this manager is no longer employed, then another manager or the HR Adviser who advised the final hearing panel will present the management case.

10.17 The employee (or his/her representative) will present their case after the management case.

10.18 Witnesses may only be called if there has been new evidence introduced which may have a material effect on the outcome and which has come to light since the final hearing or where the individual concerned was unavailable to attend the original hearing. Any witnesses present may be questioned by the presenting manager, appellant or representative, the panel and advisor(s) to the panel. The order of questioning shall be in line with the normal procedure.

10.19 Questioning of either the presenting manager or the appellant may only be carried out by Members or by the HR adviser to the Member panel.

10.20 Once the management and appellant have presented their case, both sides will present a summary of the key points. The case against the appellant will be summarised first. No new evidence can be introduced in closing statements.

10.21 The presenting parties will then leave the hearing to allow the Member panel, with any adviser or advisers, to deliberate in private. The parties can be recalled to clarify any points of uncertainty.

10.22 Having deliberated, the Appeal panel will generally recall both parties to the room in order to give a decision on the case. It may sometimes be necessary to give a decision on the case at a later date if the deliberations are likely to last a long time.

10.23 The decision will be confirmed in writing, and the letter should usually be

## **Haringey Council**

dispatched within 3 working days.

# Haringey Council

## APPENDIX 1

### CAPABILITY PROCEDURE: APPEAL SUBMISSION FORM

Employees who receive a formal sanction of a written warning or above have a right of appeal against this decision. The appeal must be made in writing using this form. The completed form must be returned within 10 working days of the date of the decision letter and must be completed in full, outlining the reasons for the appeal.

<b>Name</b>		<b>Service</b>	
<b>Job Title</b>		<b>Contact Telephone</b>	
<b>Line Manager</b>		<b>Trade Union Rep</b>	

#### Summary of Finding at Final Hearing:

1. Dismissal
2. Other sanction – (please specify)

#### Indicate your reason for making the appeal

1. Against the basis on which the decision was made	2. Against the level of sanction imposed
3. That the process followed at the original hearing was incorrect.	4. To take into account evidence which came to light after the hearing and which you believe to have a material affect on the outcome of the case

Please outline your appeal, giving as much detail as you can (including any evidence you have to substantiate your appeal) (please include your name on any supplementary sheet submitted)

Please note that your appeal will not be lodged until the form is completed in full.

<b>Signature</b>	<b>Date</b>
------------------	-------------

The completed form must be returned to:  
Head of HR, Level 4 Alexandra House, 10 Station Rd, Wood Green, London N22 7TR.  
T&C Review Capability  
Final Oct 12