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# Capability Policy

## SHARED SERVICES



Council of the  
ISLES OF SCILLY

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May 2015

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**Law relating to this document:**

Employment Rights Act 1996

Employment Relations Act 1999

Employment Act 2008

ACAS Code of Practice on disciplinary and grievance procedures

## REVISIONS TO SOURCE DOCUMENT

Version	1.2	Approving Committee	Full Council
Date	May 2015	Ratified by Council	
Responsible Officer	Senior Officer: Shared Services	Review Date	May 2016

Version History			
Date	Version	Author/Editor	Comments
2013	1.0	HR+OD Manager	Original policy
15/04/15	1.1	LWJ	Revised policy
05/05/15	1.2	LWJ	Revisions following staff consultation

Equalities Impact Assessment Record					
Date	Type of Assessment Conducted	Stage/Level completed (where applicable)	Summary of Actions Taken Decisions Made	Completed by.	Impact Assessment Review date

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## POLICY STATEMENT

- 1.1 Effective performance from all our employees is essential if the Council is to deliver a first class service. The aim of this procedure is to ensure the fair and consistent treatment of employees who are deemed as not meeting the standards of performance required. This is done by supporting the employee with training and coaching to achieve and maintain satisfactory levels of performance.
- 1.2 “Capability” refers to an employee’s ability to carry out the duties of their post to the required standard. The standard will be appropriate to the level of the job and the skills and experience it is expected of an employee in that position. It is expected that the employee will be able to fulfil the main functions of the job for which they were employed. Each line manager will ensure that every employee:
- Is aware of the duties of their post and the skills and competencies required as outlined in their role profile;
  - Has been set performance targets through the objective setting / Performance and Development Review process and is aware of them;
  - Has been provided with the relevant training, coaching and support to undertake the tasks of their job.
- 1.3 This Procedure only deals with matters relating to employee performance through capability. The Council’s Disciplinary Procedure addresses issues relating to employees’ misconduct. The Probation Procedure will be used to deal with capability issues that may arise during a probationary period. Issues relating to capability through ill health will be addressed by the Sickness Absence Policy.
- 1.4 Managers using this procedure will maintain fairness and consistency of treatment, and avoid discrimination in accordance with the Council's Policies.
- 1.5 The power to dismiss any employee rests with a member of the Senior Leadership Team.

## PRINCIPLES

- 2.1 There are a number of key principles that underpin the Capability Procedure to ensure that employees are treated consistently, effectively and fairly:
- The line manager’s responsibility is to monitor an employee’s performance and to ensure that the employee is aware of any concerns. The line manager will ensure that appropriate support, training and coaching is provided to help the employee to meet the required standards.

- Line managers have the right to meet and raise issues with employees where there is concern about their performance. The line manager will establish realistic and measurable standards and provide feedback on performance through normal supervision, regular one to one meetings and performance review meetings.
- Employees have the right to be represented at a formal meeting by a trade union representative or work colleague (who is not a family member).
- At every stage except dismissal, employees will be given the opportunity to improve their performance.
- Employees will be given a clear written explanation of any formal capability action taken, the improvements that are required and the agreed timescales when their performance will again be reviewed.
- The manager has the discretion to extend the review period, if the employee has not reached the required performance standard, but is expected to do so in the near future. Any such extension is unlikely to last for more than one month.
- Employees will have the right to appeal against any formal action taken under this procedure.

## INFORMAL PROCEDURE

- 3.1 An employee's performance will be monitored regularly through informal one to one meetings and regular Performance and Development Reviews. The time between regular informal reviews should be agreed in advance. If the line manager has concerns about an employee's performance, they will bring these concerns to the employee's attention.
- 3.2 The line manager will explain what level or standard of work is required and discuss with the employee any training, coaching or support that could help the employee meet the required standard. The line manager will clarify the ways in which the employee is to improve their performance. The employee will be warned that unless their performance improves to a satisfactory level, formal action will be taken.
- 3.3 Line managers are most likely to be the officers expressing original concerns over an individual's performance. Before discussion with the individual they should take advice from their own line manager who will, where appropriate, discuss the details and process with HR.

## FORMAL PROCEDURE

- 4.1 If an employee fails to meet the performance standards expected as set out in the meetings with their line manager, then the formal procedure will be applied.

## FORMAL MEETING

- 5.1 Employees will be given a minimum of 5 working days written notice of a formal meeting. They will be given details of their poor performance and told of their right to be represented by a trade union representative or a work colleague (who is not a family member). The employee will be advised of any current formal capability warnings against them and will be provided with a copy of the Capability Procedure.
- 5.2 If an employee is unable to attend the meeting, through circumstances outside of their control, the meeting will be re-arranged on one occasion. If the trade union representative or colleague (who is not a family member) cannot attend the meeting, the employee should suggest an alternative date no later than 5 working days after the original date. The 5 day time limit will not be extended without mutual agreement.
- 5.3 If the employee fails to attend the re-scheduled meeting, without good reason, the manager can continue with the meeting in the employee's absence.
- 5.4 If an employee is unavailable to attend due to sickness absence, advice may be sought from Occupational Health to assess their fitness to attend a meeting, and a decision on a postponement will be made by the Manager and HR based on this information.
- 5.5 The formal meeting will involve a member of the Senior Leadership Team or Senior Officer, the employee's line manager (as appropriate) and a representative from HR. At the meeting, the line manager (as appropriate) will describe how the employee's performance is unsatisfactory and outline the gap between actual and required standard of performance. The employee will then be given the opportunity to explain why their performance has not met the standards expected and provide supplementary information.
- 5.6 After hearing the employee's case, an adjournment will be called. Following careful consideration of all the facts and circumstances, the meeting will be re-convened. Wherever possible, the member of the Senior Leadership Team or Senior Officer will inform the employee of their decision and details of any formal action. If no decision can be reached, and further reflection is required, the employee will be informed of the decision in writing within 5 working days wherever possible.

## CAPABILITY ACTION

### FIRST WRITTEN WARNING

- 6.1.1 If the member of the Senior Leadership Team or Senior Officer feels that the employee's explanation is unsatisfactory, the employee will be issued with a first written warning.
- 6.1.2 The employee will be advised that their performance will be monitored against a Performance Improvement Plan (see Appendix 1). This will specify what improvement is required and provide information about how the employee's work will be monitored. The manager will discuss with the employee what training and support they think would help them reach the required standard and this will be included in the Performance Improvement Plan.
- 6.1.3 Employees will be informed of the decision in writing. The letter will include:
- (a) confirmation of the decision;
  - (b) details of why the employee's performance is unsatisfactory and set out the improvement required by the employee to meet the required standards of performance;
  - (c) the timescales in which the improvement must be made and the date for a review of the performance, normally between 6 – 12 weeks;
  - (d) a warning that failure to achieve the standard of performance required may lead to a final written warning and possibly dismissal;
  - (e) a copy of the Performance Improvement Plan and confirmation of when that will be reviewed;
  - (f) details of what additional training, mentoring or support the employee will receive to help them achieve the standards set;
  - (g) confirmation of the employee's right of appeal and a copy of the relevant procedure;
  - (h) confirmation that the warning will remain on their personal file for a period of 12 months;

- (i) that after the warning has expired, reference to it will be removed from the employee's personal file and disregarded.

6.1.4 The employee's performance will then be monitored and regularly reviewed against the Performance Improvement Plan. If the employee's performance improves and meets the required standard, this will be confirmed to the employee, in writing, and no further action will be taken.

#### FINAL WRITTEN WARNING

6.2.1 If the employee's performance does not improve, then a further formal meeting will be held to consider a Final Written Warning. The formal meeting will again consist of a member of the Senior Leadership Team or Senior Officer, the line manager and a HR representative. The employee will have the right to be represented by a trade union representative or colleague (who is not a family member).

6.2.2 Employees will be issued with a final written warning where their performance has failed to meet the standards required within the specified timescale following the first written warning or, has failed to maintain the standards required within 12 months of the first written warning.

6.2.3 Employees will be informed of the decision in writing. The letter will include:

- (a) confirmation of the decision;
- (b) details of why the employee's performance is unsatisfactory and set out the improvement required by the employee to meet the required standards of performance;
- (c) a warning that failure to achieve the standard of performance required may lead to dismissal;
- (d) a copy of the Performance Improvement Plan and confirmation of when that will be reviewed;
- (e) details of what additional training, mentoring or support the employee will receive to help them achieve the standards set;
- (f) confirmation of the employee's right of appeal and a copy of the relevant procedure;
- (g) confirmation that the final written warning will remain on their personal file for a period of three years;
- (h) after the warning period of three years has expired reference to it will be removed from the employee's personal file and disregarded.

- 6.2.4 The employee's performance will then be monitored and regularly reviewed (at least monthly depending on nature of the issue) against the Performance Improvement Plan. If the employee's performance improves and meets the required standard, this will be confirmed to the employee, in writing, and no further action will be taken.

## DISMISSAL

- 7.1 Employees may be dismissed where their performance has failed to meet the standards required in the timeframe following the final written warning, (twelve months).
- 7.2 The formal meeting will consist of a member of the Senior Leadership Team, the line manager and a HR representative. The employee will have the right to be represented by a trade union representative or colleague (who is not a family member). If the case is against the Chief Executive and the Monitoring Officer the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the '2015 Regulations') will apply.
- 7.3 Employees will be informed of the decision in writing. The letter will include:
- (a) confirmation of the decision;
  - (b) the reason for the dismissal;
  - (c) the date on which the employment contract will terminate;
  - (d) details with regard to notice, pay in lieu of notice;
  - (e) confirmation of the employee's right of appeal and a copy of the relevant procedure;

## REDEPLOYMENT

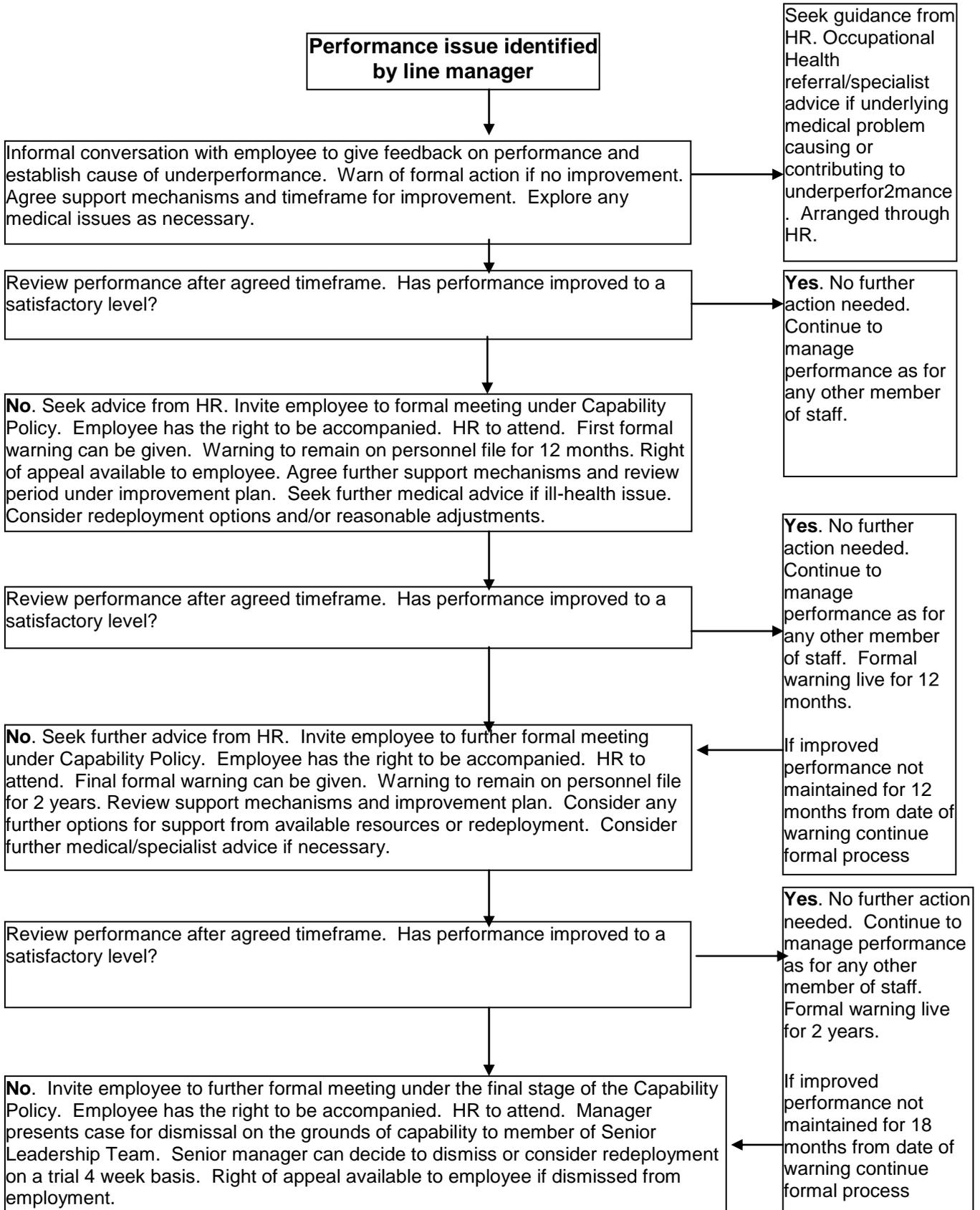
- 8.1 At any stage of the procedure, the manager may consider alternative employment as an alternative to formal proceedings brought on the grounds of capability. Any redeployment will be with the agreement of the employee and will be subject to the availability of alternative opportunities.
- 8.2 If following action under this procedure, an employee demonstrates that they are unable to fulfil the functions of the post for which they were employed, the Council will be under no obligation to offer re-deployment, however, in appropriate circumstances and where it is practical to do so a manager will:
- (a) consult with the employee about alternative employment that might be available;

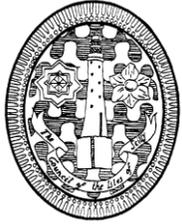
- (b) ensure that the employee's views and individual circumstances are taken into account;
  - (c) consider with the employee, what other type of role may constitute reasonable alternative employment, whether any is available and what roles the employee should be considered for.
- 8.3 If a redeployment opportunity is offered, the employee should be given 5 working days to consider the offer. If offered, the employee will be subject to a four week trial period in the new role. If satisfactorily completed, a new role may be offered possibly on different terms and conditions. If the trial period is not completed in a satisfactory way, the capability procedure will be resumed where it left off.
- 8.4 Pay protection will not be applied in cases of redeployment under the Capability procedure.

## APPEALS PROCEDURE

- 9.1 An employee has a right of appeal against a sanction issued under this procedure. A request for an appeal should be sent in writing to the Senior Officer: Shared Services, and set out the grounds on which the employee believes that the decision was flawed or unfair. The request should be sent within seven days of the employee receiving written confirmation of the sanction imposed on them by the Council.
- 9.2 An appeal meeting will be convened to consider the matter. It will be chaired by a member of Senior Leadership Team (SLT) together with a representative from HR neither of whom will have had any involvement in the case. The employee will be entitled to be represented by a trade union representative or colleague (who is not a family member). If the case is against the Chief Executive and the Monitoring Officer the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (the '2015 Regulations') will apply.
- 9.3 At the meeting, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.
- 9.4 The result of the meeting will be either to confirm the sanction, or substitute any outcome that was available to the panel conducting the hearing at which the sanction was imposed on the employee.
- 9.5 The outcome of the appeal will be confirmed to the employee in writing, explaining the grounds on which the decision was reached. The outcome of the appeal will be final.

**APPENDIX 1 CAPABILITY PROCEDURE FLOWCHART**





Council of the Isles of Scilly

**APPENDIX 2 PERFORMANCE IMPROVEMENT PLAN**

**Employee:**

**Line manager:**

**Date the PIP was issued:**

**Review date or dates:**

Define the task, skill or competence that needs to be reviewed and improved	Improvement needed and standards expected	Action or support needed	Target date	Were the standards expected achieved?	Comments
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	

The above action plan has been discussed and the employee is aware of their responsibilities and what is expected of them. If the employee fails to achieve the standards or improvements expected of them, their manager may take action under the capability policy.

**Employee's signature:**

**Date:**

**Manager's signature:**

**Date:**

