

# CAPABILITY POLICY

Human Resources and Organisational Development



**PLYMOUTH**  
CITY COUNCIL

1. Policy		Approved by
<p>Plymouth City Council is committed to continuous improvement to ensure excellent service delivery. Improvement is dependent on the ability of employees to achieve and maintain expected standards of performance. Employees are expected to be competent and able to undertake the duties of the post for which they are employed.</p>		HR and OD Management Team
<p>This document provides a formal framework to encourage improvement amongst employees whose performance or attendance is regarded as unsatisfactory or unsustainable. It also sets out the steps to follow where consideration may need to be given to terminating employment on the ground of capability.</p>		Date
		December 2011
2. In Scope		
<p>Situations covered by this policy are:</p> <ul style="list-style-type: none"><li>▪ unsatisfactory performance related to skills / abilities;</li><li>▪ unsatisfactory performance related to health, whether due to inability to meet the required standards of performance for the role or due to attendance (sickness absence)</li></ul>		
3. Out of Scope		
<ul style="list-style-type: none"><li>▪ Employees in their probationary period: please refer to the probation policy and procedure.</li><li>▪ Action or Dismissal on the ground of Some Other Substantial Reason.</li><li>▪ Action or Dismissal on the ground of the employee's conduct: please refer to the Disciplinary Policy.</li></ul>		
4. Key Principles		
<p>In the first instance and where appropriate, capability issues should normally be dealt with informally under the Managing Individual Performance Guide or <a href="#">Managing Attendance (Sickness) Guide</a>.</p> <p>There are three stages to the formal capability procedure:</p> <p>STEP 1: Investigation, recommendation and if appropriate, preparation for hearing.</p> <p>STEP 2: The hearing, which can relate to:</p> <p><i>Unsatisfactory performance related to skills: (section 2.1) and / or</i> <i>Unsatisfactory performance related to health: (section 2.2).</i></p>		

## STEP 3: The right to appeal

### Consideration of suspension

In exceptional circumstances it may be necessary to consider suspending an employee, for example, where their attendance or performance at work is placing them or others at risk, is affecting the delivery of service, or where there is a risk that these things may happen. In such circumstances, suspension may be deemed necessary or desirable whilst an investigation and / or hearing is conducted. Any decision to suspend will normally be made by the Assistant Director or delegated officer in consultation with an HR Adviser.

Suspension is always on normal contractual pay and is not itself any form of sanction, nor does the fact of suspension give rise to any implication that formal action will or should be taken against the employee on the ground of capability. The reasons for suspension must be stated in writing to the employee using the [standard suspension letter](#). This letter should set out the reasons for the suspension and any restrictions which apply to the employee during the period of suspension.

### The right to be accompanied

Suspension and Investigatory Meetings: the manager will normally permit the employee to be accompanied at such a meeting, provided it is practical and reasonable to do so in the circumstances and it does not cause undue delay to the process.

Formal Hearings: the employee has the right to be accompanied by a companion who is either a trade union representative or a workplace colleague.

The companion can:

- Put forward the employee's case, by making representations, questioning management witnesses and calling evidence on behalf of the employee, sum up the employee's case at the conclusion of the evidence, and respond on the employee's behalf to any view expressed at the hearing.

The companion is not permitted to answer questions posed directly to the employee in relation to the capability issues under consideration.

### Conflict of interest

If any person involved in the formal process (whether at the investigatory, hearing or appeal stages) believes that they may have a conflict of interest or that there is any good reason why they should not be involved in the process, they should seek immediate guidance from a HR advisor.

## 5. Step 1 – Investigation, Recommendation and Preparation

### Investigation and Recommendation

An investigation will be conducted by an appropriate manager (often the line manager), to gather evidence relating to the capability issues, to compile a report and to make a recommendation as to next steps. Managers should refer to the [Managing Investigations Guide](#).

Following the preparation of the investigation report, the case will be reviewed by a more senior manager and a decision will be reached as to whether a formal hearing is necessary.

The employee must co-operate with the investigation process. Willful refusal to do so may be regarded as a disciplinary offence and may result in disciplinary action being taken. If the employee wishes to submit any evidence during the process, they should do so during the course of the investigation so that this information can be taken into account. If the employee fails to submit such evidence at the investigation stage, it is possible that the Chair of the formal hearing will refuse to accept it, unless there are extenuating circumstances which adequately explain why evidence was not submitted earlier or the Chair takes the view that due its relevance, the evidence must be heard in any event.

If, at any stage during the investigation process, it appears that the matter is one of conduct rather than capability, the investigation should transfer to the [Disciplinary Policy](#).

### **Preparation for hearings**

Formal hearings are normally chaired by a senior manager, supported by a HR Adviser. A note taker will be in attendance.

The employee will be notified of the specific capability issues, the potential gravity of the situation (and specifically whether dismissal may be a consideration), the arrangements for the hearing, and provided with a copy of the investigation report and any supporting evidence no less than 5 working days in advance of the hearing. The employee should be told which witnesses management have asked to attend. Similarly, the employee should notify management in advance of the hearing of any witnesses he intends to call to give evidence.

Management will endeavour to set the meeting for a mutually convenient date within a reasonable timescale. Once the date has been set, an application by the employee to change the date of the meeting may be accepted if there is good reason. A second and final date will be offered, usually not more than five working days after the original date. Save where there are particular extenuating circumstances, no further changes to the timing of the meeting will be offered and the employee will be informed that if they do not attend, the meeting may go ahead in their absence.

If the employee fails to attend the hearing, advice from a HR Adviser should be sought. A decision may be made to proceed without the attendance of the employee, on the basis of the evidence available. In cases where the employee has trade union representation, they may present the employee's case in the employee's absence (provided the employee has given them authority to do so) and in any case, the employee will be permitted to make written representations.

## **6. Step 2 – The Hearing**

### **Hearing outcomes**

The potential outcome of a capability hearing is one of the following:

- No formal action, first advisory notice, final advisory notice, dismissal (with notice)

### **2.1 Unsatisfactory performance related to skills**

Formal hearings are held where an employee has failed to reach the required standards of performance following a performance improvement plan and/or where an employee's level of performance amounts to a serious shortfall, often involving a risk to themselves, their colleagues, service users or other third parties or to members of the public.

The purpose of the hearing is to:

- Consider the evidence as to the employee's standards of performance against targets and objectives.
- Consider the impact of the individual's performance on the service, colleagues, customers, service users and other relevant third parties.
- Consider the extent of any support provided to date and whether and to what extent it would be reasonable to provide further support.
- Consider any mitigating circumstances.
- Determine what, if any action should be taken.

A further outcome of a capability hearing (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has underperformed.
- Any targets, standards and/or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any performance monitoring arrangements and information as to the dates on which any further performance reviews will take place
- The likely consequences of failing to meet the required standards of performance.

A performance capability hearing will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from a HR adviser.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the Disciplinary Policy.

## **2.2 Unsatisfactory performance or attendance relating to health**

Formal hearings are likely to be held in the following circumstances:

- Where an employee has been absent from work due to long term sickness and is unable to return to work, either in the foreseeable future or at all.
- Where an employee's high levels of sickness absence (in terms of frequency or duration, or both) and has therefore not met the required levels of attendance and / or performance.
- Where an employee is able to attend work regularly but is unable to perform to the required standards due to issues relating to his health.

The purpose of the hearing is to:

- Consider the evidence as to the employee's standards of attendance and / or performance.
- Consider the impact the employee's health may have had on their levels of attendance and / or performance.
- Consider the extent of any adjustments or support provided to date, the effectiveness of such measures and whether and to what extent it would be reasonable to provide further adjustments or support to encourage or enable the employee to meet the required standards.

- Where appropriate, consider any medical advice (eg from Occupational Health or the employee's medical advisors).
- Consider the wider impact of the employee's attendance or performance issues, such as the effects on the employee's colleagues, department or service, clients, service users or other relevant third parties.
- Determine whether the employee has a medical condition which amounts, or is likely to amount to a disability. If so, consider whether and to what extent reasonable adjustments have been put in place to accommodate the needs of the employee, the effectiveness of such adjustments and whether and to what extent further adjustments may reasonably be made.
- Where appropriate, discuss with the employee the possibility of redeployment.
- Determine what, if any, action should be taken.

A further outcome of a capability hearing (save where the outcome is dismissal) will normally be to issue an appropriate advisory notice, detailing matters such as the following:

- How and why the employee has failed to meet the required standards of attendance and / or performance.
- Any targets, standards and / or competencies to be achieved by the employee and details of the applicable timescales for such improvement.
- Information as to any adjustments, training, supervision or support to be offered to the employee.
- Details of any attendance or performance monitoring arrangements and information as to the dates on which any further reviews will take place
- The likely consequences of failing to meet the required standards of attendance and / or performance.

A health-related capability hearing will not normally result in a dismissal unless one or more previous advisory notices have been given. While the standard process will be to issue a first and a final advisory notice before dismissal is a consideration, it may not be appropriate to do so in every case. If dismissal is a potential consideration without having first issued a first and a final advisory notice, advice should be sought from a HR adviser.

An example of a case where consideration may be given to dismissal without prior advisory notices having been issued is where there is clear medical evidence that the employee will not be able to return to work in either the short or longer term and that no adjustment or support is likely to change this.

In cases of very serious performance issues which appear to be the result of misconduct as opposed to capability, or gross negligence (misconduct) the case should be dealt with under the Disciplinary Policy.

### **Further Guidance as to Hearing Outcomes**

In addition to the four main outcomes set out above, the following guidance should be noted:

- Where there is no underlying health condition which could be considered to be a disability, a first or final advisory notice may be issued in the first instance, depending on the circumstances. The employee will be advised as to how their absences and / or performance will be monitored in the future and under what circumstances consideration may be given to further action being taken under the this policy.
- Where the employee has or is likely to have a disability and reasonable adjustments have not improved attendance or performance, an advisory notice can be issued which details

any alternative measures agreed at the hearing (e.g. a reduction in hours, amendments to duties or transfer into an alternative position within the department). The effectiveness of such further measures will be monitored and the employee advised under what circumstances consideration may be given to further action being taken under this policy.

- A further potential outcome of a capability hearing for a disabled employee may be that they wish to seek alternative employment or early/flexible retirement. If the employee wishes to be considered for alternative roles they will be placed in the redeployment register for at least one month to seek alternative employment. Failure to find alternative employment will normally lead to a further capability hearing.
- An employee may be dismissed on the ground of capability where appropriate. Examples of such cases will include the following:
  - The employee is unfit / unsuitable due to medical reasons to fulfil the duties of his post and is likely to remain so for the foreseeable future, even, in the case of disabled employee, with reasonable adjustments being made.
  - The employee is unfit / unsuitable due to medical reasons to fulfil the duties of any suitable alternative role which is available to him and is likely to remain so for the foreseeable future, even, in the case of a disabled employee, with reasonable adjustments being made.
  - All reasonable attempts to support the employee in their role have been unsuccessful in enabling the employee to meet the required standards of attendance and / or performance.

Employees in the pension scheme can be considered for capability ill-health retirement if they meet the relevant criteria.

## 7.

### RIGHT OF APPEAL

All employees have the right to appeal against the outcome of a formal capability hearing. Please refer to the Appeals Policy (General) and Appeals Policy (Dismissal).

#### 8. Other relevant guide/policies

#### Relevant legislation

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>▪ <a href="#">Probation Policy</a></li> <li>▪ Individual Performance Management Guide</li> <li>▪ <a href="#">Managing Attendance (Sickness) Guide</a></li> <li>▪ <a href="#">Disciplinary Policy</a></li> <li>▪ <a href="#">Redeployment Support Pack</a></li> <li>▪ <a href="#">Appeals Policy (General)</a></li> <li>▪ <a href="#">Appeals Policy (Dismissal)</a></li> </ul> | <ul style="list-style-type: none"> <li>▪ Employment Rights Act 1996</li> <li>▪ Equality Act 2010</li> </ul> |
|---|---|