

CAPABILITY POLICY

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Related Policies	Probation Policy Disciplinary Policy Managing Sickness Absence Policy

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1. Purpose

- 1.1. The council is committed to creating a working environment where all individuals have an opportunity to achieve their full potential and to provide a sustained and demonstrable contribution to the service. ~~It is recognised that in order to foster this environment, it~~ is essential that all our employees fully understand both the requirements of their role and the level of performance expected of them and the support they can ~~expect~~ receive from the council to assist them in achieving this.
- 1.2. The council will ensure that employees, who for genuine reasons, are not able to maintain agreed standards of performance, will be treated fairly, sympathetically and in line with contractual obligations. The Capability policy is designed to assist such employees to meet and maintain the required standards of performance through a process of open and honest communication backed up by a range of support mechanisms and services.
- 1.3. This policy sets out a fair and reasonable way of managing capability concerns from poor performance or sickness absence, injury or disability.
- 1.4. ~~The~~This policy has been developed in consultation with UNISON.

2. Scope

- 2.1. This policy applies to all employees* of ~~the council~~ Havant Borough Council, regardless of gender, gender reassignment, race, religion or belief, disability, sexual orientation, age, trade union membership or public interest disclosure status. The policy also applies to employees who are part time and those employed on fixed term contracts.

* New staff with no ~~prior~~ continuous service ~~within the council within their probationary period are excluded from this policy and~~ will be managed in accordance with the probationary policy.

3. Principles

- 3.1. The Capability policy requires the manager to fully review all informal and formal action taken previously to bring about the desired improvement in the employee's performance and that all the relevant information available is taken into consideration when determining next steps.
- 3.2. It is possible that an employee may identify a lack of capability themselves. The principles of this policy will apply where the manager agrees with the employee's assessment of his/her capability. As such, managers should create an environment where employees feel able to freely discuss their concerns and offer support in exploring how best to take forward any issues identified.
- 3.3. Employees will have the right to be accompanied by a Trade Union representative or work colleague at all formal meetings held under the Capability policy. There is no entitlement to be accompanied by a legal representative.

3.4. It is recognised that not every concern/issue regarding performance neatly fits into a category and therefore a number of elements must always be considered:

- The line manager will raise and deal with issues promptly and will not unreasonably delay any meetings, decisions or written confirmation of decisions.
- The line manager will carry out any appropriate investigations and seek further relevant and up to date information
- The line manager will inform employees of the concern/problem and give them an opportunity to respond before any decisions are made.

3.5. When dealing with capability, a distinction between performance and actions that clearly call for disciplinary action (e.g. won't rather than can't) needs to be made. HR advice must be sought if there is any doubt. This policy runs parallel with, but is not part of the disciplinary policy. It sets out a fair and reasonable way of managing poor performance.

3.6. When an employee is being supported through the capability process and is absent due to sickness, it may be necessary to refer to the Managing Sickness Absence Policy for further information ~~on managing this situation. The Capability Policy will apply in all other circumstances.~~

3.7. Individual managers are responsible for ensuring that the appropriate policy is followed and will ensure that the employee is ~~not-treated~~ unfairly/fairly

~~3.8.~~ 3.8 Capability issues will be treated as confidentially ~~as possible, so that only those who need to know will be informed or involved.~~

4. Definitions

4.1 'Capability' in the Employment Rights Act 1996 is defined as an employee's 'capability assessed by reference to skill, aptitude, health or any other physical or mental quality'. Lack of capability or loss of capability can arise for various reasons. It can be short or long term in its effects. Some examples of these are:

- Where an employee does not have the necessary skills, knowledge, or experience to do their job. As an example, this may have arisen due to skills sets changing (Introduction to new IT).
- Factors outside the workplace which may affect an employee's work performance as a consequence of a relationship breakdown, illness in the family, financial difficulties.
- Where an employee becomes ill or develops a disability, either physical or mental.

4.2 Where such concerns arise in relation to a pregnant employee, advice and guidance must be sought from HR. Further guidance on pregnancy and maternity rights can be found within the Maternity Policy.

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5. Roles and Responsibilities

Role of the Employee

All employees have a contractual responsibility to attend work and carry out the requirements of their job to a satisfactory standard. Therefore, employees must:

- Take all reasonable steps required to improve their performance including undertaking any relevant training and development.
- Avoid activities that are likely to impact on their performance at work.
- Comply with all safe working practices and engage in health, safety and wellbeing strategies conducive to supporting good performance at work.
- Engage in regular discussions with the manager to review and address any internal or external factors affecting their ability to perform within their role or to attend work.
- Engage in all meetings arranged under this policy.
- Attend all Occupational Health and other medical referrals / appointments / case conferences when required.
- Comply with reasonable requests made under the Access to Medical Records Act (1998) in a timely way to ensure that relevant information is available to the council to support the employee in addressing an identified underperformance issue.
- Participate in appropriate treatment programmes recommended by Occupational Health.
- Identify and engage in any support mechanisms identified to improve performance.

Role of the Manager

Managers are responsible for identifying and addressing any concerns relating to the performance of their employees. It is the responsibility of the manager to monitor the performance of their direct reports and apply the capability policy fairly and consistently taking the individual circumstances of each case [in-into](#) consideration. Managers should:

- Ensure every employee understands their role and responsibilities and what is expected of them under the policies that make up their terms and conditions of employment.

- Ensure that employees are aware of the standards of performance expected of them.
- Notify an employee immediately if their performance is a cause for concern and take appropriate action when standards are not met.
- Ensure that they communicate, develop and motivate their employees and ensure that relevant training is provided.
- Provide regular feedback, undertake monthly 1-2-1s and address any minor performance issues in a timely manner in order to minimise the use of formal policies.
- Ensure that all employees are signposted to the council's health and wellbeing support strategies, for example a referral to occupational health or the Employee Assistance Programme.
- Consider any suitable adjustments and / or modifications to the employee's role and / or work environment to maintain performance in work in line with policy and in consultation with Occupational Health and HR.
- Consider if the reason for poor performance is potentially due to a condition covered by the Equality Act (formerly Disability Discrimination Act) in consultation with Occupational Health and HR.
- Identify any issues in the workplace that may be adversely impacting the employee's health, safety and wellbeing.
- Keep a confidential record of all discussions relating to an employee's performance and keep HR informed with the appropriate information.
- Seek advice from HR and Occupational Health when applying this policy and other relevant policies.

Role of Occupational Health

The role of Occupational Health is to:

- Provide advice (including as necessary, recommending medical assessments and obtaining reports) on health issues affecting an employee's performance in work.
- Identify and advise on the nature and extent of any underlying medical issue(s).
- Advise when / if the medical issue is likely to be resolved, taking into consideration the length of time it will take to recover from the illness.
- Advise on the likelihood of the illness reoccurring or of some other related illness emerging.

- Advise whether the medical issue is covered by the Equality Act and what adjustments are required (if any).
- Recommend any suitable rehabilitation programme and / or modified duties which would facilitate the employee in remaining in work or returning to work at the earliest opportunity.
- Advise on whether redeployment should be considered to help retain employment with the council.
- Consider any concerns raised by the employee about their health and / or working environment.
- Note any other relevant medical information or impact an illness may have on the employee and / or workplace.
- Liaise with the employee's general practitioner (GP) to establish prognosis, likelihood of their illness / condition reoccurring, the duration of the illness / condition as well as their ability to perform within their role, attend / return to work or undertake modified duties etc.
- Provide advice and guidance to the employee relating to their health, wellbeing and safety.

Role of Human Resources (HR)

The role of HR is to provide support and guidance to managers and employees who are dealing with performance issues. HR will:

- Provide guidance on how to deal with issues and concerns from both employees and management.
- Provide coaching to managers on how to apply the policies appropriately.
- Ensure that the policies are applied fairly and consistently taking into account the circumstances of each case.
- Be present at all meetings arranged under the Capability policy.
- Provide reports and statistical information at an organisational level.

6. Procedure

6.1. This procedure relates to performance and sets out the action to be taken.

- Application of this policy will arise where standards of performance relating to skills, application of knowledge and / or experience required by employees to perform their role to a satisfactory level are consistently not being met (see Section 7 below).

- 6.2. In most cases, minor concerns regarding an employee's capability will be resolved informally through the use of other mechanisms such as 1-2-1s, informal discussions during the working day or appraisals. Managers are expected to keep notes of these discussions and agreed actions / improvements. Causes could include lack of skills, inadequate training, lack of support, tools or other resources, lack of communication, problematic working relationships or ill-health/underlying medical condition. The manager will give the employee factual examples of unsatisfactory performance and the employee will be asked for their explanation.
- 6.3. However, where informal resolution has not been achieved and there continues to be an impact on service delivery, managers will move into the Capability policy to formally address on-going concerns regarding an employee's performance.
- 6.4. Nothing in this policy is intended to prevent the normal management process of supervisory support whereby managers allocate work, monitor performance, highlight work done well and draw attention to errors and poor quality or quantity of the work output. This should include informal assistance in achieving improvement.
- 6.5. There are three formal stages in this policy which are designed to support an employee in improving their performance within a 12 month rolling period.
- Stage 1 – Capability meeting
 - Stage 2 - Capability (Review Meeting)
 - Stage 3 – Final Capability meeting (Review of Employment)
- 6.6. These stages will be implemented sequentially when managing under-performance relating to skills, knowledge or appropriate experience. Where an improvement following a previous shortfall in performance has failed to be maintained the manager may decide, for example, to enter back into this policy at stage 2 and will explain the reasons for their decision to the employee. Managers will not 'by pass' any of the earlier stages without providing ~~fair and~~ reasonable justification ~~for doing so~~ and without consulting HR for advice first.
- 6.7. If an employee's performance fails to reach the standards expected by the council and all attempts to support the employee in attaining the required standards have been unsuccessful in a time scale set, then steps may be taken to dismiss the employee on the grounds of Capability.
- 6.8. The employee will be entitled to appeal any decision made at any stage of this policy.
- 6.9. A written record of all meetings and any necessary action must be given to the employee and a copy placed upon the employee's personal file at every stage of this policy.

- 6.10. Employees must be given a reasonable period of notice, in writing, of any formal meeting. Any time limits are a guide only and may be amended as applicable as long as if all parties are notified, and reasons given.
- 6.11. The notification at each stage should contain enough information for the employee to understand the reasons for the meeting and allow them to come prepared to discuss the issues concerned.

7. Dealing with Capability due to Performance

Capability in relation to underperformance will normally arise where the required improvement has not been achieved through the normal informal process in a time scale set.

7.1 Stage 1 – Capability Meeting

- 7.1.1 An employee's line manager may initiate a Stage 1 – Capability meeting where it is considered that an employee is not performing to the appropriate standard, and informal discussions and support mechanisms put in place have not resolved the issue(s).
- 7.1.2 HR support and advice should be sought on all occasions before the meeting takes place.
- 7.1.3 During the meeting, the employee will be informed of his or her identified under performance and will be provided with examples of where their performance has failed to meet the standards required. The employee and their representative will be given the opportunity to respond and explain any causes for the under-performance. They will then be informed of the expected standard of performance to be achieved, the policies/procedures/guidance and competencies against which these standards are being measured, any support or assistance to be provided, the specified timescale for achievement (usually three months) and the consequences of failing to make sufficient improvement.
- 7.1.4 One outcome from the meeting could be that temporary modifications are agreed to the employee's substantive role. The manager must also be clear if they are issuing a first written warning and the reasons why. The warning will normally be issued for a period of not less than 6 months.
- 7.1.5 A record of the meeting will be kept by the manager for reference purposes. The manager will also write to the employee placing a copy of the letter on the employee's personal file, confirming the following:
- The date and time the meeting has taken place under the council's Capability Policy
 - The concerns discussed
 - Expected standards of performance / work
 - Agreed action plans
 - Any support or assistance to be offered

- Whether or not a warning was issued and the period of time it is valid for
- Timescales for achievement and review dates
- Consequences of insufficient improvement
- Right of appeal

During the specified review period, interim meetings will be arranged to review progress which could be held weekly, fortnightly or monthly as appropriate.

- 7.1.6 If during the Stage 1 - Capability meeting the employee and manager agree that the necessary improvement is not going to be achieved within a reasonable timescale and further advice or guidance confirms this, then the meeting should be adjourned and reconvened as a Stage 2 – Capability (Review Meeting) due to the operational impact on the organisation.
- 7.1.7 Whilst an employee is subject to the capability process, they will not be eligible for an increment to their salary.
- 7.1.8 Where the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. Confirmation that this is the case will be given in writing to the employee and a copy placed on their personnel file.
- 7.1.9 The employee will continue to be monitored during the period of their live written warning with regular reviews, at least on a monthly basis.

7.2 Stage 2 – Capability (Review Meeting)

- 7.2.1 A Stage 2 – Capability (Review Meeting) will be convened by [an Executive Head-of-Service](#), the equivalent or above. This may be the same manager that conducted the Stage 1 – Capability meeting subject to the manager being of sufficient seniority. HR must also be in attendance.
- 7.2.2 The Stage 2 – Capability (Review Meeting) will be called:
- At the end of the stage 1 specified review period (or earlier if there is good reason) where the required improvement has not been achieved; or
 - Where there is evidence that the improvement has not been sustained during this period.
- 7.2.3 The manager, having reviewed all the relevant information, will explain the reasons for calling the Stage 2 – Capability (Review Meeting) clearly outlining with examples, where the employee's performance is failing to meet the required standards. The manager will also recap the action taken to date to support them in achieving the necessary standards giving the employee the opportunity to respond and explain any causes for their continued under-performance. The line manager may also attend to provide details of the action taken to date.
- 7.2.4 The possible outcomes of this meeting could be:
- To agree a further period over which the required improvements can be achieved and extend the first written warning by 6 months. The employee should be reminded of the expected standards of performance to be achieved; the policies/procedures/guidance and competencies against which these standards are measured; any support or assistance to be provided; the specified timescale for achievement and the potential consequences should the employee fail to achieve the required standards or
 - Issue a final written warning valid for a period of at least 12 months from the date of the meeting. The employee should be reminded of the expected standards of performance to be achieved; the policies/procedures/guidance and competencies against which these standards are measured; any support or assistance to be provided; the specified timescale for achievement and the potential consequences should the employee fail to achieve the required standards or
 - To agree a permanent modification to their substantive role. Alternative contractual conditions may include reduced working hours, change of working pattern; revised job description etc. Any changes which require an amendment to an employee's contract of employment must be made in conjunction with advice from HR. Where permanent modifications are agreed to an employee's hours and/or working pattern, the employee's salary will be adjusted as applicable.

- To agree redeployment to another post (where appropriate and subject to availability), in which case the meeting should be adjourned and a copy of the Redeployment policy given to the employee. The employee must be advised to complete a skills assessment form which will be used to assess their suitability for vacant roles. The employee should be advised at this stage that if no suitable alternative employment is secured during the redeployment period, their contract of employment could be terminated on the grounds of capability.
- A failure to agree, resulting in a Stage 3 Capability (Review of Employment) meeting being convened.

7.2.5 The manager will write to the employee confirming the outcome of the Stage 2 – Capability (Review Meeting), placing a copy of the letter on the employee's personal file.

7.2.6 Where the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. Confirmation that this is the case will be given in writing to the employee.

7.3 Stage 3 – Final Capability Meeting (Review of Employment)

7.3.1 A Stage 3 – Final Capability Meeting (Review of Employment) will be convened by [an Executive Head of Service](#) or above. The line manager will ensure that any documentation demonstrating the employee's underperformance must be provided to the employee in advance of the meeting (including a Capability Management report detailing the nature of the concerns and actions taken to date with any improvement made). Since this meeting will involve decisions regarding an employee's future employment, the hearing manager will not have had any previous involvement with the case.

7.3.2 The Stage 3 – Final Capability Meeting (Review of Employment) will be called:

- At the end of the stage 2 specified review period where the required improvement has not been achieved and it has been concluded that sufficient improvement by the employee is unlikely to be achieved within a reasonable period of time; or
 - When following initial attainment of satisfactory performance at either stage 1 or stage 2, there are further failures to meet the agreed standards of performance;
- or**
- The consequences of the employee's under performance have a significant adverse effect on the organisation.

- 7.3.3 The hearing manager, with the employee, will review all the relevant information provided to the employee and will explain the reasons for calling the Stage 3 – Final Capability Meeting (Review of Employment). They will clearly outline where the employee’s performance is failing to meet the required standards. The hearing manager will also recap the action taken to date to support them in achieving the necessary standards giving the employee the opportunity to respond and explain any causes for their continued under-performance. The line manager may also be present at this meeting to explain the action taken to date.
- 7.3.4 The possible outcomes of this meeting could be to agree:
- A permanent modification to their substantive role. Alternative contractual conditions may include reduced working hours, change of working pattern; revised job description etc. Any changes which require an amendment to an employee’s contract of employment must be made in conjunction with advice from HR. Where permanent modifications are agreed, the employee’s salary will be adjusted as applicable.
 - Redeployment to another post, where appropriate and subject to availability, in which case the meeting should be adjourned and a copy of the Redeployment policy given to the employee. The employee should be advised at this stage that if no suitable alternative employment is secured during the redeployment period, their contract of employment could be terminated on the grounds of capability;
 - To determine that dismissal on the grounds of capability is appropriate where it has been demonstrated that the employee has failed to achieve the standards of performance required and no suitable alternatives are available as outlined at Dismissal (Section 8).
- 7.3.5 In exceptional circumstances, the manager may determine some other suitable outcome is appropriate given the facts of the case. Where this is the case, the manager will seek advice from Strategic HR. The employee will be advised in writing of the particular set of circumstances which have led to the manager’s decision; informed of any particular requirements the employee must satisfy and/or achieve, and advised when the situation will be reviewed.
- 7.3.6 The hearing manager will write to confirm the outcome of the Stage 3 – Final Capability Meeting (Review of Employment), placing a copy of the letter on the employee’s personal file.
- 7.3.7 Where the required improvements in performance are achieved during the review period, the process will be deemed to have been satisfactorily concluded and the issues resolved. Confirmation that this is the case will be given in writing to the employee.

8. Dismissal

- 8.1 If the employee's performance is confirmed as unacceptable; the criteria for an ill health pension has not been met; all suitable alternative courses of action have been exhausted or refused by the employee or are deemed inappropriate, the decision to dismiss will be taken on the grounds of 'capability'.
- 8.2 A decision to dismiss can only be taken by a Head of Service, the equivalent or above.
- 8.3 Dismissal can only occur, when it is clear that:
- the standards of performance have been made explicitly clear to the employee;
 - the employee has failed to reach or maintain the required standard of performance having been given reasonable time, support and opportunity to do so;
 - Redeployment / modifications (if appropriate) have not proved possible or have been refused by the employee.
 - Occupational Health opinion in relation to the payment of an ill health pension has been sought (only applicable where dismissal occurs as a result of ill health, injury or acquired disability Section 2).
- 8.4 The employee will be entitled to formal notice in accordance with their contract of employment, or payment in lieu of notice (if appropriate). The letter of termination will confirm the effective date of termination and confirm the reason for dismissal as being due to capability. It will also notify the employee of their right of appeal.
- 8.5 Advice must be sought from Strategic HR before any decision to dismiss is taken.

9. Right of Appeal

- 9.1 The employee has the right of appeal against an outcome at any stage during this policy. Any appeal must be made in writing to the [Head of Organisational Development/Chief HR Officer](#) within ten working days of receipt of the notification of the decision.
- 9.2 The appeal must clearly state the grounds for the appeal. The grounds of appeal will be one or more of the following:
- That the decision was inappropriate in the circumstances.
 - That new evidence has come to light or that evidence which should have been taken into account was not taken into account.
 - That the policy was not followed correctly.
- 9.3 Appeal panels will comprise as follows:

- An appeal against a written warning/final written warning will be heard by a manager at the next most senior level above the manager who issued the written warning and who has had no previous contact with the case (where necessary this will be a manager from another service). A representative from HR will act as advisor.
 - An appeal against a dismissal for posts at [Executive Head of Service](#) level and above will be heard by three members of the HR Committee. [The Head of Organisational Development/The Chief HR Officer](#) will act as the HR representative.
 - An appeal against a dismissal for posts below [Executive Head of Service](#) will be heard by one member of the HR Committee, [an Executive Head of Service/Service Director](#) and a member of the HR team.
- 9.4 The employee will be given a minimum of 5 working days' notice, in writing, of the Appeal Hearing. The employee will be told of their right to be accompanied by an accredited trade union representative or fellow employee. Any additional information should be exchanged at least three working days before the hearing. New evidence may be disallowed, or cause adjournment if presented on the day of the hearing.
- 9.5 The appeal hearing may result in the appeal being dismissed in which case the decision stands. The decision may be retrospectively cancelled or allowed in part by substituting a lesser decision which could have been imposed at the original hearing.
- 9.6 The decision of the Appeal Panel will, where possible be announced to both parties at the completion of the hearing. The decision will be confirmed in writing within 5 working days. There is no further right of appeal.
- 9.7 Where the issued warning or dismissal is rescinded, the employee will be no less favourably treated than if the action had not been taken. All relevant documentation and supporting evidence from the original Hearing and the Appeal Hearing will be removed from the personal file and disregarded.

APPENDIX 1 – CAPABILITY POLICY FLOW CHART

