



HUMAN RESOURCES POLICY STATEMENT

CAPABILITY POLICY

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Purpose

To establish a procedure which ensures fair and consistent treatment of employees if problems arise with their work performance. The procedure is designed to deal with such problems by offering employees the help and encouragement to achieve and maintain a satisfactory standard of work or a fair and reasonable route to terminate their employment.

To manage the procedure without reference to an employee's race, colour, ethnic origin, nationality, political or religious beliefs, age, disability, gender, sexual orientation or marital status.

Scope

All employees of Harlow Council with the exception of the Chief Executive and Strategic Directors. The provisions of this procedure shall not apply during an employees first 26 weeks of employment with the Council or in cases of misconduct or incapability by reason of ill-health which are dealt with under separate arrangements.

If a shortfall in performance is identified during an employees first 26 weeks of employment with the Council you should refer to the policy: **Probationary Policy**

If a shortfall in performance is identified to be for reasons of misconduct you should refer to the policy: **Disciplinary Policy**

If a shortfall in performance is identified to be for reasons of ill-health you should refer to the policy: **Sickness Absence Management Policy**

The terms 'supervisor' and 'manager' used throughout this policy and its procedures is someone who has responsibility for supporting employees either directly or in directly on a day-to-day basis.

Policy Statement

Harlow Council believes employees are generally motivated by their responsibilities and involvement in their work and as a consequence are able to perform to a satisfactory standard. However there will be occasions when employees are unable to achieve the required performance standards and in these situations such employees will be given reasonable help and encouragement to reach a satisfactory level of performance before formal action is considered.

The aims of the procedure are therefore

- to encourage and assist employees to improve and maintain improvements in their level of performance
- to provide a means through which issues of capability can be addressed in a systematic and unbiased manner
- to provide a fair and open mechanism for the imposition of appropriate sanctions-up to and including dismissal-where this proves necessary.

The Capability Procedure focuses on improvement and development and should link in to the day-to-day performance management of all employees including the PPP process wherever possible.

Formal action under this procedure should only be taken where it has not proved possible to effect performance improvements by informal means. It is therefore essential that every employee should clearly understand from their job description and instructions received from their supervisor, what competencies are required to effectively fulfil their role. Competencies being the skills, aptitude, and/or ability to perform the key elements of the job.

It is the responsibility of supervisors and managers to ensure that employees have this understanding and that any failure on their part to reach satisfactory performance be identified as quickly as possible. As part of this process employees should be encouraged to identify any reasons they feel may have adversely affected their performance and how the required improvements can best be achieved.

Informal Procedure

As soon as a shortfall in performance becomes evident the manager should discuss the matter with the employee, outlining in detail the area(s) in which the shortfall is occurring and giving the employee the opportunity to provide an explanation. The manager's concerns must therefore be based on a proper assessment of relevant material and/or incidents and be sufficiently specific for the employee to understand where his/her performance is unsatisfactory and how he/she can improve. Consideration should also be given to matters largely outside of the employee's control.

Following this review the manager and employee will work together, with advice and support from Human Resources where required, to resolve shortfalls in performance. A Capability Development Programme will be agreed between the employee and the manager-or where no agreement is reached-be required by the manager which will be designed to assist the employee to improve to the required standard. This may include one or more of the following:

- further advice and/or coaching
- SMART objectives
- further or additional training
- closer supervision for a limited period
- an adjustment of the duties consistent with the needs of the service which do not change the general character of the job.

Once developed with the employee the Capability Development Programme will be put in writing and will identify:

- the improvement in performance required and action taken by management to assist the employee achieve this improvement
- the period over which it is expected to occur-this will be determined by management but must be of sufficient length to allow adequate time for improvement and further assessment
- the employee's performance will be monitored and reviewed periodically within the assessment period
- the possibility of formal action being taken in the event of failure to achieve the required level of performance.

Where the informal procedure does not lead to performance improvements in the agreed time frame the manager will seek advice and guidance from Human Resources and the formal procedure may be invoked as follows:

Formal Procedure-General Principles

At all stages of the procedure employees have a right to the following

- the employee must be informed of his/her right to be accompanied at a hearing by a fellow employee or trade union representative and the employee shall be so accompanied unless he/she decides otherwise
- the employee must be made fully aware in writing in advance of any formal meeting of where shortfalls in performance have been identified, be provided with any relevant documentation including witness statements to be used by management at the formal meeting, and be given an adequate opportunity to put his/her case including the right to produce documents and call witnesses
- a copy of any action-eg warnings, capability development programmes, personal improvement plans, timescales etc- must be provided for the information of his/ her representative if the employee so requests
- where the capability issue is with a Head of Service the Chief Executive will nominate appropriate officers for all functions of the formal procedure with advice from HR.
- action under the Capability Procedure shall not be taken against a Shop Steward or trade union representative without the prior involvement of an accredited officer of the relevant union
- all rights and facilities under this procedure shall be made available to all employees regardless of race, colour, ethnic origin, nationality, political or religious beliefs, disability, gender, sexual orientation, age or marital status
- no provision under this procedure shall be seen as inhibiting an employee's right to lodge a complaint under relevant statute
- all information in capability cases will be treated as confidential

- employees will be given at least 5 working days written notice of all formal meetings
- formal decisions and reviewed Personal Improvement Plans will be communicated in writing within 10 working days of a meeting taking place.

The Conduct of Capability Matters

(See Appendix 1 for Flowchart of Formal Procedure)

Officers Authorised to Take Action

Action	Minimum Authority
Verbal Warning	Management tier above immediate line manager/ supervisor
Written Warning	Management tier above immediate line manager/ supervisor
Final Written Warning	Head of Service
Dismissal	Head of Service

Review

Prior to a formal meeting being convened a full review of the allegations of poor performance must be carried out and a capability report produced either by the employee's manager or a person nominated by the relevant Head of Service. It is essential that the person conducting the review is not involved in considering the case at any subsequent formal meeting although he/she may present the case at such a meeting.

It is therefore important that this person should be of sufficient seniority to undertake this role and to make an informed judgement as to whether a case is sufficiently serious to proceed to a formal capability process.

Where following the review and after taking advice from Human Resources a capability issue appears to exist a formal meeting will be convened and conducted in accordance with the provisions of this procedure. Where the employee indicates that he/she will not attend the formal meeting it may be necessary to conduct the formal meeting in the employee's absence. Where the employee's absence is due to ill health one postponement and rearrangement of the formal meeting will be permitted. At the request of the

employee a trade union representative or fellow employee may represent the employee in his/her absence.

Prior to the formal meeting

Human Resources shall ensure that the matter is heard by a person of sufficient seniority who has had no prior involvement in the case. A letter outlining the reasons for formal action being taken shall be issued by Human Resources to the employee concerned with the capability report attached. The letter will set out details of the location, date and time of the formal meeting. The employee shall be given no less than five working days notice of the date of the formal meeting and be advised of his/her right to be accompanied by a fellow employee or trade union representative.

At the formal meeting

The person chairing the formal meeting will ensure that the following rules of procedure will apply. A representative from Human Resources will be present at all formal meetings to advise on points of fact, evidence, procedure and law and to produce a formal written record.

- The manager responsible for lodging the claim of unsatisfactory performance will make a statement in support of formal action being taken based upon the capability report. He/she will have the opportunity to call witnesses or produce documents as appropriate
- The employee and/or his/her representative will be given the opportunity to respond to these statements and to call witnesses or produce documents in support of their case.
- Both the manager and the employee and his/her representative will be able to put questions to witnesses.
- The person chairing the formal meeting and the Human Resources Advisor may put questions to the manager, the employee or the witnesses
- Witnesses shall not be present while other witnesses give evidence
- On completion of the formal evidence and questioning the manager will be invited to submit any final observations. The employee and/or representative will then make a similar final statement. In both cases the statements must only summarise arguments and evidence already submitted. No new evidence may be considered at this stage.
- Both parties will withdraw while the matter is being considered
- If an early decision is reached both parties may be asked to return to the formal meeting to receive the decision verbally which will subsequently be confirmed in writing. In all other circumstances the decision will only be communicated in writing.

The person chairing the formal meeting may either:

- (a) Accept that sufficient improvement in performance has occurred to make further formal action unnecessary or

(b) Review the history of the case and draw up a Personal Improvement Plan which will set out in written detail:

- The standards that are required to be met
- SMART objectives to achieve the standards required
- The action that needs to be taken by the employee
- The action that needs to be taken by the manager
- Any additional support that will be offered to the employee in terms of further training, closer supervision etc
- The timescale during which the improvement needs to be achieved including any set monitoring or review periods (Maximum of 12 weeks)
- The consequences of the required standards not being met
- The date for a formal review meeting
- The issuing of a verbal warning
- The right to appeal

(c) At the end of the review period a further formal meeting will be convened. The chair of the meeting will assess improvements made based upon evidence provided by both the manager and the employee or his/her representative.

If standards have been met he/she will be informed in writing that, subject to the improved levels of performance being maintained, no further action will be taken and the formal procedure will be discontinued. This letter will be kept on their personal file for 12 months from the date that the warning was issued and if there is evidence during this time of the employee not sustaining the level of performance required, the procedure may be resumed at any stage up to and including the stage previously reached.

If the standards set have not been achieved full consideration will be given to any explanation for the continuing shortfall in performance, any improvement that has been achieved will be acknowledged and any additional steps that can reasonably be taken will be agreed. The Personal Improvement Plan will be reviewed including the setting for a new specified period (Maximum of 6 weeks) during which the improvements need to be achieved, during which time the employee will be given every support and encouragement to reach the required standard.

The employee will be issued with a first written warning that will include the details of the reviewed Personal Improvement Plan and new review period.

(d) At the end of the review period a further formal meeting will be convened. The chair of the meeting will assess improvements made based upon evidence provided by both the manager and the employee or his/her representative.

If standards have been met he/she will be informed in writing that, subject to the improved levels of performance being maintained, no further action will be taken and the formal procedure will be discontinued. This letter will be kept on their personal file for 12 months from the date that the warning was issued and if there is evidence during this time of the employee not sustaining the level of performance required, the procedure may be resumed at any stage up to and including the stage previously reached.

If the standards set have not been achieved full consideration will be given to any explanation for the continuing shortfall in performance, any improvement that has been achieved will be acknowledged and any additional steps that can reasonably be taken will be agreed. The Personal Improvement Plan will be reviewed including the setting for a new specified period (Maximum of 6 weeks) during which the improvements need to be achieved, during which time the employee will be given every support and encouragement to reach the required standard.

The employee will be issued with a final written warning and be informed in clear and unambiguous terms that continued failure to meet the required standards will almost certainly result in dismissal on grounds of capability. Written details of the reviewed Personal Improvement Plan and new review period will be provided.

- e) At the end of the review period a final formal meeting will be convened. The employee must be informed in writing in advance of the formal meeting taking place that dismissal is a possible outcome.

The chair of the meeting will assess improvements made based upon evidence provided by both the manager and the employee or his/her representative.

If standards have been met he/she will be informed in writing that, subject to the improved levels of performance being maintained, no further action will be taken and the formal procedure will be discontinued. This letter will be kept on their personal file for 12 months from the date that the warning was issued and if there is evidence during this time of the employee not sustaining the level of performance required, the procedure may be resumed at any stage up to and including the stage previously reached.

If insufficient improvement is forthcoming during the period specified following the previous formal meetings consideration should be given to alternatives to dismissal such as redeployment, transfer or demotion.

The procedure to be followed at this formal meeting will be similar to that utilised at previous stages except that it must be conducted by the Head of Service or his/her deputy. A decision to dismiss can only be authorised by the Head of Service following consultation with the Head of Human Resources, and confirmed in writing within five working days of the formal

meeting taking place. Dismissal shall be with notice in accordance with the employee's contractual entitlements, although Heads of Service have the discretion to authorise payment in lieu of notice where this is thought to be of mutual benefit to the employer and employee.

The procedure will normally operate consecutively through each of the elements outlined above. However there may be occasions when the nature and potential effect of the employee's poor performance means that an element or elements of the procedure will need to be omitted. If at any time it is found that the issue is one of misconduct or ill-health rather than poor performance the case may be transferred to the Disciplinary or Sickness Absence Procedure at a comparable point in the process without the need to commence proceedings at the beginning.

Appeals

Employees who wish to appeal against a verbal or first written warning should do so in writing to the relevant Head of Service. Appeals against final written warning or dismissal should be made in writing to the Head of Human Resources. All appeals must be within ten working days of being notified of the decision. The appeal should state clearly the grounds on which it is made.

Appeals against verbal and first written warning will be heard by the Head of Service or other officer authorised by the Head of Service. In most cases the person hearing the appeal will be a more senior member of management than the person who presided at the original formal meeting. Where an appeal is against a decision taken by a Head of Service or Strategic Director it may be heard by the Chief Executive or a Strategic Director nominated by the Chief Executive. All appeals against dismissal will be heard by the Chief Executive or a Strategic Director nominated by the Chief Executive.

A representative from Human Resources will be present at all appeals. Where the appeal is against a final written warning or dismissal a representative of Human Resources will be present to take management notes of the appeal. The employee has the same rights to representation as applied at the formal meeting stage of the procedure.

Responsibility

All employees are required to adhere to the provisions of this procedure. Individual managers are responsible for ensuring that the procedure is properly implemented within their own areas. Human Resources are responsible for ensuring the maintenance, review and updating of the procedure. Amendments to the procedure can only be implemented following consideration and approval by the Head of Human Resources.

At any stage employees may seek advice, on a confidential basis, from Human Resources on the operation and interpretation of the procedure. Managers should seek advice from Human Resources concerning the application of the procedure prior to any formal action being taken. Where differences in interpretation exist such matters will be referred to the Head of Human Resources whose ruling will be final.

Capability Report

Evidence considered by
Authorised Manager

Appendix 1 Formal Procedure

First Meeting

(Attended by Authorised Manager (Chair), Line Manager, employee and their representative)
Authorised Manager decides whether there is a capability issue after considering evidence from managers and the employee.

Employee informed in writing

No further action

Personal Improvement Plan including:

- Targets for improvement
- Timescale set (**Max. 12 weeks**)
- Verbal warning

Employee informed in writing inc. right to appeal & acknowledges receipt

Support Meetings

Second Meeting

(Attended by Authorised Manager (Chair), Line Manager, employee and their representative)
Authorised Manager decides if targets have been met after considering evidence from managers and the employee.

Employee informed in writing

Targets not met

Targets met

1st written warning
PIP reviewed for next (**6 weeks**)

Employee informed in writing inc. right to appeal & acknowledges receipt

Support Meetings

Third Meeting

As second meeting

Targets not met

Targets met

Final written warning
PIP reviewed for next (**6 weeks**)

Employee informed in writing inc. right to appeal & acknowledgement receipt

Support Meetings

Final Meeting

Head of Service decides if targets have been met after considering evidence from managers and the employee.

Employee informed in writing

Targets not met

Targets met

Dismissal with notice

Employee informed in writing inc. right to appeal

No further action unless levels of performance are not maintained over next 12 months. Employee informed in writing.