



Eden
District Council
Capability Procedure

Version	Date	Status	Comments
1.0	June 2009	Draft	Draft revised policy
2.0	September 2009	Final	Final Version
3.0	February 2015	Draft	<p>Amended the style to reflect the EDC style of having a separate policy and procedure;</p> <p>Amended the principles to reserve the right to skip the Final Written Warning stage if the Council believes this will be futile;</p> <p>Amended the formal process to clarify the usual stages;</p> <p>Amended the appeals procedure to achieve consistency with other policies such as absence. Appeals against warnings will be heard by management and appeals against dismissal will be heard by a sub-committee of HR and Appeals Committee</p> <p>Introduced a flow chart of the process to aid understanding;</p> <p>Introduced a template to be used for performance improvement plans.</p>
3.0	05 November 15 to 11 January 16	Draft	Consultation with staff
3.0	January 2016	Final	No changes suggested through consultation
3.1	January 2018	Final	Removed reference to probationary period

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1. Introduction

- 1.1 The procedures set out in this document aim to ensure that there is:
- a means of monitoring performance and establishing performance criteria;
 - a degree of consistency in how staff with widely differing responsibilities and duties are given the opportunity to attain a satisfactory level of performance;
 - assistance in identifying the most appropriate forms of support and providing that support.
- 1.2 If an employee does not meet the required standard of performance any consequent action will be based on:
- adequate evidence that the employee understood the required standard of performance and the shortfalls that exist;
 - adequate evidence that the employee was given reasonable support and assistance to overcome the shortfalls;
 - adequate evidence that the employee was given a reasonable period of time within which to reach the required standard of performance; and
 - a fair procedure.
- 1.3 A flow chart can be found at Appendix 1 which sets out both the informal and formal steps of the capability process.

2. Principles

- 2.1 The first task is to identify that there is a problem. To assist in this the following questions should be addressed:

- What are the indications that an employee is not performing to the required standard?
 - Is the employee aware of the standards and expectations of the job?
 - Has the employee been given adequate induction and training?
 - Have there been complaints about or criticisms of the employee's work from colleagues, suppliers, customers or members of the public?
 - Are there factual grounds to indicate inadequate performance, such as poor results?
 - Do the Manager's own observations of the employee's work indicate dissatisfaction with their performance?
 - Has the employee asked for help to overcome the problem?
- 2.2 The employee's capability must be assessed in relation to the job for which s/he is employed to do.
- 2.3 It would be usual to begin with the informal process and then progress to the formal process, however there may be occasions where it is deemed appropriate to move straight to a formal process.
- 2.4 Within the formal process it would be usual to progress through the levels of warning, if required. However, where an employee has been issued with a written warning and at review, no improvement has been achieved, there may be some occasions where if the issuing of a final written warning would be seen to be futile, and in such cases the Council reserves the right to omit this stage and progress directly to a capability hearing.
- 2.5 Each stage of the procedure should be carefully documented.

3. Scope

- 3.1 This procedure applies to all employees of Eden District Council at all stages of employment.

4. Informal Stage

- 4.1 The Manager will convene a meeting with the employee. At the meeting the Manager will outline the performance shortcomings, agree the performance standards required and the time-frame over which improvement will be expected and how this will be measured and monitored. This will be confirmed in writing. It is important that the employee is made aware of the consequences of the failure to improve.
- 4.2 The employee should be given a copy of this procedure, or signposted to its location on SharePoint, if they are not already familiar with it.
- 4.3 In discussion with the employee, the Manager will also decide on the support and help that will be offered. The nature of the alleged

shortcoming(s) will determine the nature of the help to be provided. This could include:

- Mentoring and/or coaching
- Provision of suitable training
- Management and/or peer support
- Appropriate equipment

- 4.4 A template has been provided at Appendix 2 which can be used to record the details of a performance improvement plan, highlighting the required standards of performance, the date by which this standard is required, any support that will be provided, and details of when the plan will be reviewed.
- 4.5 The employee must be supported for a period of time which is reasonable considering the post, the nature of the shortcoming(s) and the employee's length of service before a decision is taken to move to the formal stage. This would normally be between four and twelve weeks.
- 4.6 Where the employee's performance improves to the standard required, the employee should be informed of this and also reminded of the need to maintain the improved standard. The procedure may be suspended on the understanding that it will be re-invoked if performance becomes unsatisfactory at any time in the future.

5. Formal Stage

- 5.1 The formal stage may begin if, after monitoring and support provided within the informal stage, the employee's performance remains unsatisfactory. Alternatively, it may begin if the Manager deems that the informal route is not appropriate in the circumstances.

5.2 First Meeting

- 5.2.1 The Manager will arrange a meeting with the employee.
- 5.2.2 The employee can be accompanied by a trade union representative or workplace colleague.
- 5.2.3 The employee must be given at least five working days written notice of the meeting and confirmation of the nature of the concerns and any accompanying documents that will be referred to at the meeting.
- 5.3.4 At the meeting the employee will be given a reasonable opportunity to comment on the concerns and to ask any questions.
- 5.2.5 The line Manager will then conclude what action s/he proposed to take. If there are no extenuating circumstances then the Manager will issue a written warning.
- 5.2.6 The written warning, in the form of a letter must state:

- that it is a written warning;
- which aspects of the employee's performance must improve*;
- what support will be available*;
- what timescale and against what targets and criteria the employee's performance will be assessed*;
- that failure to meet the required standards may lead to further action within the capability procedure which could include dismissal;
- the date of the end of the assessment period when a review meeting will be held and:
- that there is a right of appeal against a warning and the details of the appeal process.

* A template has been provided at Appendix 2 which can be used to record the details of a performance improvement plan, highlighting the required standards of performance, the date by which this standard is required, any support that will be provided, and details of when the plan will be reviewed.

5.3 First Review Meeting

5.3.1 At the review meeting the Manager will discuss with the employee their performance during the assessment period. Following discussion the Manager will decide:

- whether the employee's performance has reached the required standard, and therefore, after a monitoring period of three to six months, withdraw the procedure if performance continues to be satisfactory;
- whether the employee's performance has not reached the required standard, and therefore requires the issuing of a final written warning. In some circumstances, this step may be seen as futile in terms of supporting the employee, and the Council therefore reserves the right to proceed directly to a capability hearing in certain circumstances.

5.3.2 The employee can be accompanied by a trade union representative or workplace colleague to the review meeting. At the meeting the employee and/or their representative will be given a reasonable opportunity to comment on the review and to ask any questions.

5.3.3 If a final written warning is to be issued, the details referred to in section 5.2.6 should be repeated in the letter.

5.4 Second Review Meeting

5.4.1 At the review meeting the line Manager will discuss with the employee their performance during the assessment period. Following discussion the Manager will decide:

- whether the employee's performance has reached the required standard, and therefore, after a monitoring period of three to six months, withdraw the procedure if performance continues to be satisfactory;
- whether the employee's performance has not reached the required standard, and therefore requires a capability hearing to be convened.

5.4.2 The employee can be accompanied by a trade union representative or workplace colleague to the review meeting. At the meeting the employee and/or their representative will be given a reasonable opportunity to comment on the review and to ask any questions.

5.4.3 Where a capability hearing is required to be convened, the Manager will confirm this in writing to the employee, advising them that further details will follow in due course.

5.5 Capability Hearing

5.5.1 The Capability Hearing will be chaired by a Chief Officer.

5.5.2 The employee will be given at least five working days' written notice and advised of the right to be accompanied by a workplace colleague or trade union representative. The written notification should confirm the nature of the concerns and provide all relevant evidence that will be discussed at the hearing.

5.5.3 The Manager will present the evidence for the areas of concern, the process followed and the support and training given.

5.5.4 The employee will be given the opportunity to respond.

5.5.5 The Chief Officer will consider the evidence about the lack of capability in order to determine the most appropriate outcome, which could be one of the following:

- to dismiss the employee with notice;
- to give the employee further time to improve;
- to consider whether alternative employment is available and can be offered to the employee (see paragraph 5.5.6 below); or
- to withdraw the procedure.

5.5.6 If redeployment to alternative employment is possible, it may not be to a post which attracts the same terms and conditions as the employee's current post. An offer of redeployment will be made to the employee in writing and s/he will be given reasonable time to consider the offer, and if

s/he so wishes, discuss it with his/her employee representative. Where redeployment is accepted, salary will be paid at the appropriate rate for the post regardless of any previous salary paid in any previous post. Redeployment will only be made to an established current vacancy. The Council is not obliged to create a post for the employee.

- 5.5.7 The decision must be confirmed in writing within five days of the hearing and the employee must be notified of his/her right to appeal.

6. Appeal

Employees who receive a penalty through the procedures outlined above have a right of appeal against the penalty.

6.1 Appeal Against a Written or Final Written Warning

- 6.1.1 An employee wishing to appeal against a written or final written warning should do so in writing. This must be sent to the manager who heard the case within 10 working days of receipt of the outcome letter.
- 6.1.2 Wherever possible, appeals will be heard within 15 working days of receipt of appeal.
- 6.1.3 The appeal will be heard by a different manager to the manager who issued the warning. Wherever possible, the appeal will be heard by a manager who is more senior to the manager who issued the warning.

6.2 Appeal Against Dismissal

- 6.2.1 An employee wishing to appeal against dismissal on the grounds of capability should do so in writing. This must be sent to the Chief Officer who heard the case within 10 working days of receipt of the outcome letter.
- 6.2.2 Wherever possible, appeals will be heard within 15 working days of receipt of appeal.
- 6.2.3 The appeal will be heard by an appeals panel which will consist of a sub-committee of the Human Resources and Appeals Committee. A sub-committee is made up of three members of the full committee. A member of the HR and Appeals committee would not normally be selected if they have any prior involvement with the case.

7. Special Cases

- 7.1 Where formal capability action is being considered against an employee who is a Trade Union representative, the normal Capability Procedure should be followed. Depending on the circumstances, however, it may be advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- 7.2 Where an employee raises a grievance during a capability process, the capability process may be temporarily suspended in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

8. Requirement to Keep Records

- 8.1 It is important to keep written records during the capability process. Records should include:
- notes of meetings held during both informal and formal stages;
 - action taken;
 - reasons for action taken;
 - whether there was an appeal and, if so, the outcome; and
 - subsequent developments.
- 8.2 Copies of meeting records should be given to the employee and their representative for reference.
- 8.3 Records should be treated as confidential and kept in accordance with the Data Protection Act 1998 (unless there is a legitimate reason not to do so ie the protection of witnesses).
- 8.4 Records of capability hearings will be retained on general filing for the purposes of training and to record outcomes and precedents.

9. Representation

- 9.1 As confirmed throughout the Procedure, employees may be represented at formal hearings and appeals by a Trade Union representative or a work-place colleague.

10. Interpretation and Variation of the Procedure

- 10.1 Any questions as to the interpretation of this policy shall be referred to the Human Resources Manager.
- 10.2 This procedure will be periodically reviewed or revised to reflect changes in relevant legislation and best practice.

Flow Chart of Capability Process

Appendix 1

Employee's performance is identified as being below the required standard

Manager arranges an **informal** meeting with the employee to:

- Highlight the shortfalls in performance and the standard required;
- Identify any support that the employee needs to reach the required standard;
- Agree a timescale for improvement and set a review date.

Performance improves

Performance does not improve or informal route not deemed appropriate*

Process suspended. Employee reminded that improvement needs to be sustained

Manager arranges a **formal** meeting with the employee to consider the performance issues. Unless there are extenuating circumstances, a written warning is issued, a performance improvement plan is issued and a review date is set

Performance improvement plan followed

Manager arranges a **first review** meeting with the employee to review progress against the improvement plan.

If sufficient improvement:
Monitoring period of 3-6 months. No further action if performance is satisfactory after this time.

If no improvement:
Final written warning issued, performance improvement plan issued and review date set

Performance improvement plan followed

Manager arranges a **second review** meeting with the employee to review progress against the improvement plan.

If sufficient improvement:
Monitoring period of 3-6 months. No further action if performance is satisfactory after this time.

If no improvement:
Manager confirms that a capability hearing will be convened

Capability Hearing is held to consider the case. Possible outcomes:

- No further action – process suspended;
- Employee is given more time to improve;
- Redeployment to a different role is offered;
- Employee is dismissed on the grounds of capability

* NB The Council reserves the right to enter the process at the formal stage if the manager believes this is appropriate

Performance Improvement Plan

Employee _____

Date of Plan _____

Area of Development	Specific Action Required (what good looks like)	Resources and/or support required	Measure of Success	Timescale
eg Management of staff	Hold weekly one-to-one meetings with direct reports. Ensure one personal development initiative is agreed.	None	Feedback from direct reports	Within one month

Date of Review _____