

Support Staff

Capability Policy & Procedures

1. Introduction

The school's continued high levels of performance and delivery of excellent services depend entirely on individual performance. For this to continue we want to ensure we have well skilled, well-motivated, high performing employees who are proud to work for our school and South Tyneside Council.

2. Purpose of the policy

We believe that the majority of our employees meet, and often exceed, what is required of them at work. However problems can and do arise. This policy provides a framework for dealing with such problems in a fair, supportive, timely and consistent manner. The policy has six key aims:

- We want to encourage managers to assist employees to perform better through the provision of guidance, advice, training and support ;
- We want all our employees to be treated sensitively and fairly if there are issues of capability ;
- We will support employees to help them to improve and sustain performance to a satisfactory standard, and managers will take appropriate action where, despite support, standards are still not met ;
- We want managers to deal with performance issues promptly ;
- We want our employees to know what standard of performance and behaviours is expected of them. We also want them to realise how poor performance affects our services ;
- We want to find solutions to capability issues to ensure standards and quality of Council services to the community are maintained.

3. What is capability?

Employees must have the ability, skills and knowledge to carry out a role satisfactorily and must deliver outcomes based on agreed targets and work objectives. Capability refers to poor or under performance; which is the failure to meet the required standards expected. It can relate to the failure to meet the specified outcomes of the job and / or the failure to demonstrate the behaviours and standards required of a South Tyneside employee. Therefore issues around capability include:

- **What** an employee must do to do their job effectively (these are the tasks or technical skills).
- **How** an employee must behave whilst at work (see Enhancing Individual Performance for further information).

Where this policy and procedure mentions performance or underperformance it can relate to either what an employee does or how they behave.

4. Who does it apply to

This policy and procedure applies to all employees of the council except:

- The Chief Executive, Corporate Directors and the Monitoring Officer (other procedures apply) ;
- Teachers ;
- Support employees based in schools unless the Governing Body has adopted this Procedure ;
- Casual employees ;
- Employees in their probationary period (the Probationary Period – Human Resources Manual for schools applies) ;
- Employees within their trial period of a redeployment opportunity.

5. Additional information

Only in extreme circumstances can the Capability Procedure be stopped and reviewed at a later date. For further advice refer to HR Services.

The Council reserves the right to extend the review period where there have been periods of absence.

At any time during the process, but prior to the Final Capability Hearing, if both parties agree, discussions about an exit strategy can take place. This needs to be by mutual agreement between all parties and needs to be fully discussed and agreed with HR Services.

At every stage in this process the employee can bring new evidence to demonstrate mitigating circumstances.

For information about why, how and when performance should be assessed please refer to Capability Guide for Managers.

6. Prior to the Capability Procedure being invoked

Performance for all employees should be assessed on a regular basis by having regular **one to one** meetings. At these meetings managers should inform employees what level of performance and standards of behaviour are required. For new employees this should be done in the very first induction meeting.

By having regular meetings poor or under performance should be picked up straight away. Where an employee's performance falls below the required standard, **the manager must raise these concerns with the individual at the earliest opportunity**. If necessary the manager should put relevant support in place to help improvement in performance. If the employee refuses to accept that there is a

problem, even when faced with objective evidence, then consideration can be given to dealing with the issue via the **disciplinary procedure**. It may also be relevant to consider a referral to Occupational Health if there is considered to be an underlying medical condition.

Employees should be informed that if their performance does not improve then the Capability Procedure can be invoked. Employees should be informed of the final implications of the Capability Procedure, which are possible demotion without pay protection or dismissal and the timescales involved.

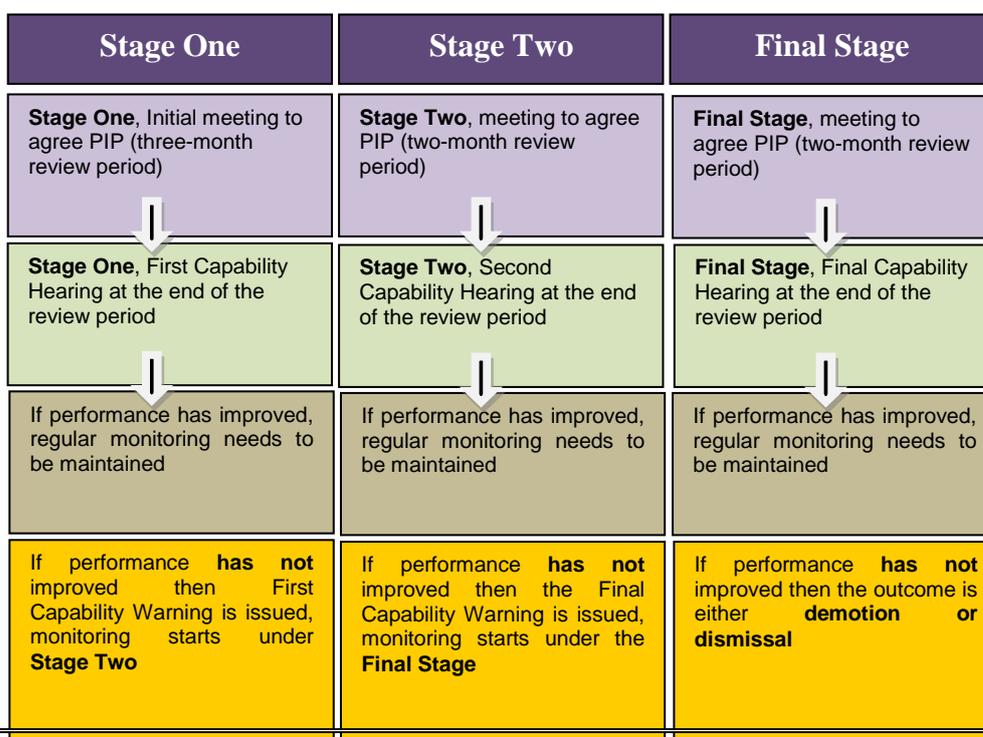
There must be clear evidence which results in the justification for triggering the start of the Capability Procedure. Employees should be notified at their regular one to one if the Capability Procedure is to be invoked. For further advice refer to HR Services.

However where an employee's under performance is of a serious nature then the manager may invoke the Capability Procedure immediately. Examples of more serious situations could include where the consequences may have a detrimental, financial or health and safety impact. For further advice refer to HR Services.

Where a newly promoted employee fails to meet the requirements of their new post, they may be offered a voluntary demotion (with no pay protection). This option is fully dependent on a suitable vacancy being available. This needs to be by mutual agreement between all parties and needs to be fully discussed and agreed with HR Services.

7. Stages to the Capability Procedure

There are three stages to the Capability Procedure; the following diagram gives an overview of the process.



8. Stage One

An initial meeting should be arranged to discuss the employee's performance. The employee should be informed they are now being monitored under Stage One of the Capability Procedure. Employees will have the right to be accompanied by a Trade Union representative. The primary role of the representative is to ensure that the hearing is conducted in a fair manner in line with this procedure. Employees are expected to answer questions put to them directly by the hearing officer, however, both the employee and the Trade Union representative can give explanations in mitigation.

From this meeting a **Performance Improvement Plan (PIP)** should be put in place; this will be live for **three months**. The line manager should hold regular **review meetings** with the employee during this period. See the Capability Guide for Managers for further information about the PIP and requirements for setting up the meeting.

At the end of the three-month review period, the employee will be invited to a **First Capability hearing**. The Chair will normally be a member of the Senior Management Team with delegated responsibility. A representative of HR Services will be present to advise the Chair.

The employee has the right to be accompanied by a trade union representative or work colleague of their choice at the Capability Hearing. The primary role of the representative is to ensure that the hearing is conducted in a fair manner in line with this procedure. Employees are expected to answer questions put to them directly by the hearing officer, however, both the employee and the Trade Union representative can give explanations in mitigation.

Both the line manager and the employee will be expected to present relevant evidence and examples in line with the expectations set out in the PIP.

At the conclusion of the Hearing, the Chair should consider all of the options available. Once a decision has been reached, the Chair should confirm the outcome to the employee.

Possible outcomes of hearing

Once a decision has been reached, the Chair should advise the employee of the outcome of the hearing. The following are possible outcomes:

- If performance has improved, then the employee should be informed of this decision verbally then in writing. However if performance deteriorates at a future date, then advice should be sought from HR Services.
- If it is decided that performance has not been satisfactory then a **First Capability Warning** should be issued. A further PIP needs to be agreed, which will outline the improvement required and detail any necessary support and training which will take place during the review period.

The employee needs to be informed that they will now be monitored under **Stage Two** of the Capability Procedure.

A copy of the First Capability Warning and a copy of the performance improvement plan should be sent to the employee and HR Services, to be retained on the employee's file.

If, during the review period, employees are showing no improvement or deterioration in performance, in line with the PIP, then the Second Capability Hearing can be advanced. Any advancement can only be made if there are indications that the employee has not or will not make any improvement during the review period and will need to be discussed with HR Services.

9. Stage Two

A meeting needs to be held as soon as possible after the hearing to agree the PIP; the two-month review period starts immediately after this meeting.

At the end of the two-month review period, the employee will be invited to a **Second Capability Hearing**. The hearing will be chaired by the Head Teacher. A representative of HR Services will be present to advise the Chair.

Possible outcomes of hearing

Once a decision has been reached, the Chair should advise the employee of the outcome of the hearing. The following are possible outcomes:

- If performance has improved, then the employee should be informed of this decision verbally then in writing. However if performance deteriorates at a future date, then advice should be sought from HR Services ;
- If it is decided that performance has not been satisfactory then a **Final Capability Warning** should be issued. A further a PIP needs to be agreed, which will outline the improvement required and detail any necessary support and training which will take place during the review period.

The employee needs to be informed this is now the **Final Stage** of the Capability Procedure. If performance does not improve in the two-month review period of the PIP then the outcome could be demotion without pay protection or dismissal.

A copy of the Final Capability Warning and a copy of the performance improvement plan should be sent to the employee and HR Services, to be retained on the employee's file.

If, during the review period, employees are showing no improvement or deterioration in performance, in line with the PIP, then the Final Capability Hearing can be advanced. Any advancement can only be

made if there are definite indications that the employee has not or will not make any improvement during the review period and will need to be discussed with HR Services.

10. Final Stage

A meeting needs to be held as soon as possible after the Hearing to agree the PIP; the two-month review period starts immediately after this meeting.

At the end of the two-month review period, the employee will be invited to a **Final Capability Hearing**.

Hearings at the final stage will be heard by an appropriate committee of the Governing Body. A representative from HR Services should be present to advise the Chair.

Final Stage Outcomes

Once a decision has been reached, the Chair should advise the employee of the outcome of the hearing. The following are possible outcomes:

- If performance has improved, then the employee should be informed of this decision verbally then in writing. However if performance deteriorates at a future date, then advice should be sought from HR Services.
- Demotion: Subject to suitable posts being available, the manager may consider offering the individual a post at a lower level that is within the individual's capabilities. In this case, salary protection would not apply and the pay terms and conditions which apply to that post will take effect.
- Dismissal: After a final capability warning has been issued, and there is no significant or acceptable improvement in performance, dismissal may be considered as the appropriate outcome.

11. Fast Track Route

In extreme circumstances, where poor performance is likely to present a risk to the school, council, staff or customers, or if there are examples of gross incompetence, employees can be fast-tracked to the final stage of the process where dismissal or demotion without pay protection maybe an outcome. This process should not be invoked without prior consultation to the Service Lead of HR Services.

Where an employee's under performance is of a serious nature then the manager may invoke the Capability Procedure immediately. Examples of more serious situations could include where the consequences may have a detrimental financial or health and safety impact. For further advice refer to HR Services.

12. Appeal

An employee has the right of appeal against Capability taken at any stage of the procedure. Any appeal must be submitted within 10 working days of receiving formal notification of the decision.

- Appeals following Stage One will be a full re-hearing. This will be heard by the headteacher.
- Appeals following Stage Two will be a review of the evidence. This will be heard by nominated representatives of the governing body.
- Appeals following the Final Stage will be a review of the evidence presented at the Final Stage Capability Hearing and will be heard by the appropriate appeals committee of the Governing Body.

If an employee wishes to appeal against the dismissal, they must do so in writing, to the appropriate Clerk to the Governing Body within 10 working days of receipt of the letter confirming the dismissal. The appeal letter must also state the grounds of the appeal. The Clerk will then notify both the Service Lead for HR Services and the Chair of Governors.

The appropriate appeals committee will consider any appeal against dismissal on the grounds of capability.

13. Equality and Diversity

South Tyneside is committed to promoting equality and valuing diversity. An equality check for HR Services was carried out in 2010 which included all the policies in the HR Manual. No equality implications were identified in this policy.

Policy approved by Governors:	Nov 2021
Date of next review by Governors:	Nov 2022