

# Support Staff

## Capability Policy & Procedures

---

### 1. Introduction

The Council's continued high levels of performance and delivery of excellent services depend entirely on individual performance.

This policy should be used when an employee's performance has been identified as falling below an acceptable level. Its purpose is to provide a framework for resolving the issue, ideally through the improvement of an employee's performance.

As a last resort, the policy specifies the circumstances in which the employee may be demoted or dismissed on the grounds of capability.

If a medical condition is contributing to poor performance, please seek further guidance from HR Services.

### 2. Our Council Values

It is important that the Council manages individual and organisational performance. High levels of performance are at the heart of our values. This enables us to deliver excellent services.

Our Values are the things we most care about. In applying this policy and process, we must uphold our [PROUD Values](#). These define what we stand for as an organisation, how we work and act.

Under each Value is a set of guiding behaviours. These apply to every person who works for or represents South Tyneside Council. They are our promise to residents, each other and to all who interact with the Council.

Standards of performance relate to both what we do (actions or tasks) and how we do it (our behaviours). Behaviours matter because they determine how other people experience us.

Below are examples of behaviours we expect and those we do not want to see.

#### Professional – we uphold high standards.

We agree to:	We will not:
Welcome people and offer help.	Make people feel unwelcome.

Be accountable.	Blame others.
Accept and learn from feedback and mistakes.	Ignore feedback.
Manage our time and resources well.	Waste our time or resources.

**Respectful – we value people.**

<b>We agree to:</b>	<b>We will not:</b>
Be polite, considerate, and kind.	Be rude or unkind.
Listen to what matters to others.	Ignore what matters to others.
Notice and thank others for their efforts.	Take others for granted.
Treat sensitive information appropriately and with care.	Share sensitive information without good reason.

**Open and honest – we trust each other.**

<b>We agree to:</b>	<b>We will not:</b>
Share helpful information, ideas.	Hold back helpful information.
Work together to get great results.	Work in complete isolation.
Speak-up against behaviours we do not want to see.	Ignore behaviours we do not want to see.
Use clear, jargon-free information where possible.	Make our information unclear.

**Understanding and engaging – we care about people.**

<b>We agree to:</b>	<b>We will not:</b>
Accept and appreciate our similarities and differences.	Treat people unfairly.
Respect different needs and try to meet them.	Dismiss different needs.
Show we care and offer support.	Show a lack of care or support.
Work together through any challenge to get the right outcome.	Think we always know what is best.

**Deliver what we say we will - we provide great services.**

<b>We agree to:</b>	<b>We will not:</b>
Always do what we say we will do.	Let people down.
Look to improve what we do and how we do it.	Settle for doing what we have always done.
Reply in good time.	Ignore people or delay our reply without reason.
Keep you up to date with everything we do.	Leave people not knowing.

The behaviours listed are not a complete list of all possible behaviours. The behaviours “we agree to” are a guide to how we live our Values.

### **3. Scope**

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

The Chief Executive

Teachers

Casual employees

Employees in their probationary period

Employees within their trial period of a redeployment opportunity.

Separate procedures will apply in respect of the final stage of this policy for the Monitoring Officer and the Chief Financial Officer

#### 4. What is Capability?

Capability refers to poor or under performance: which is the failure to meet the required standards expected.

At the outset of dealing with any issue relating to employee capability or performance which has been brought to their attention, the manager should consider whether the issue appears to be as a result of a 'cannot' or 'will not' attitude and how it should be dealt with. The table below gives examples of both:

<b>'Cannot do' – Capability Issue</b>	<b>'Will not do' – Disciplinary Issue</b>
Does not possess the right skills	Refuses to accept instructions
Does not have the ability	Disregards instructions and performs tasks in their own, unauthorised way
Lacks knowledge of desirable behaviours.	Refuses to act in a way that is aligned to our Council Values.
Has not received appropriate training	Employee is fully trained
Lacks knowledge of correct procedures	Refuses to engage in training, coaching and support offered

Where an employee has made a serious error to the detriment of the organisation, consideration needs to be given as to whether the error is the result of negligence. Negligence, deliberate or otherwise can be dealt with using the (Disciplinary Policy).

#### 5. Resolving performance issues informally prior to the Capability Procedure being invoked

Performance for all employees should be assessed on a regular basis by having regular check-ins and annual reviews. 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 and throughout the probationary period in line with the Probationary Period Policy (Probationary Period Policy).

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**. The manager should put relevant support in place to help improvement in performance. It may

also be relevant to consider a referral to Occupational Health if there is considered to be an underlying medical condition that may be impacting on performance.

When an issue arises, using the information at paragraph four, the manager should establish whether they are issues of capability or if the disciplinary policy is more appropriate.

If the issue is considered to be an issue of capability, an informal meeting should be arranged at the earliest opportunity. The purpose of this meeting is to find a solution and a way forward should be agreed by covering the following points:

The manager should provide a full explanation of where the employee is not meeting the required standard

The manager should define the expected standard of performance and give examples They should then examine the occasions where these standards have not been met by the employee

The manager should try and establish if there are any outside factors that could have impacted on an employee's performance

The manager should take into account the employee's perception of how they are performing and any evidence the employee can present to support their case

As an outcome of the informal meeting, the manager can agree to monitor performance via an informal performance plan

The manager and the employee should discuss any support that is required during the period of the informal performance plan

The manager will make it clear how and when progress will be reviewed during the informal performance plan.

It is important that a manager does not assume they know the cause of the poor performance. Causes of poor performance may include inadequate training, perhaps a change in duties or change in health circumstances, changes in circumstances at home, poor communication, issues with colleagues and stress.

Any evidence should be shared with the employee, for example letter of complaint, reports, notes of previous discussions etc. It may be made clearer to the employee if they are able to see an analysis of their job description, highlighting areas which require improvement.

Employees should be informed that if their performance does not improve then the formal Capability Procedure can be invoked. There must be clear evidence which results in the justification for triggering the start of the formal Capability Procedure. Employees should be advised of the potential outcomes of the formal Capability Procedure, which are possible demotion without pay protection or dismissal and the timescales involved. For further advice refer to HR Services.

Before the formal Capability Procedure is invoked the manager must ensure they have:

Put reasonable adjustments or support in place to help with poor or under performance

Explored the reasons for poor or under performance through regular one to one meetings

Assessed progression against agreed work objectives

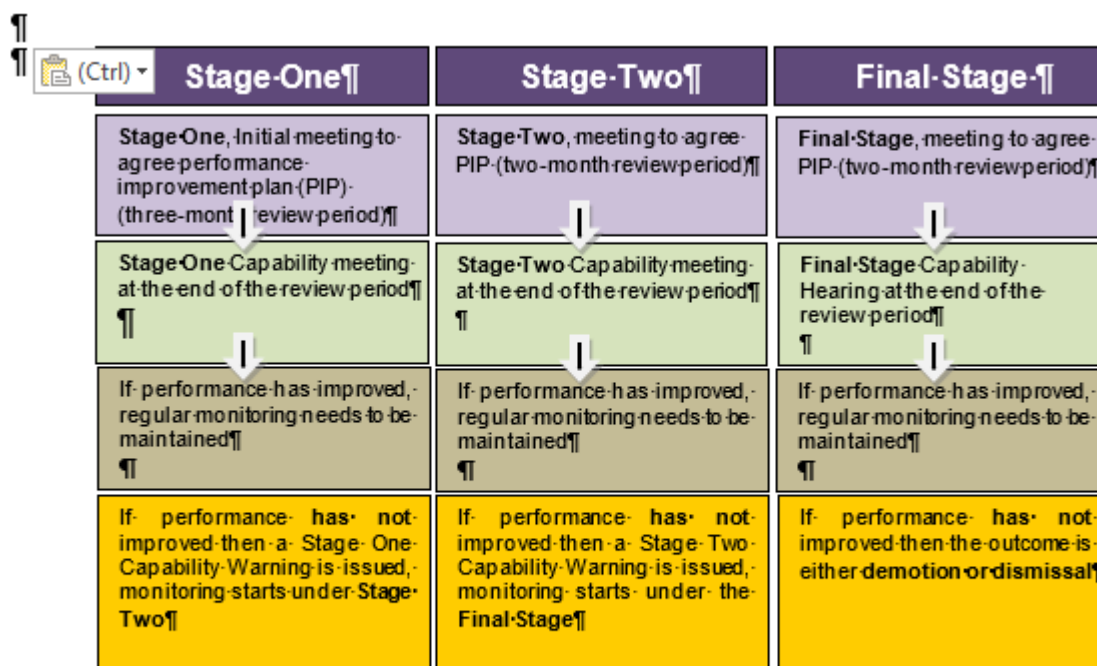
Put reasonable steps in place to help with any development needs the employee may have

Robust evidence about under or poor performance.

If all of the above points have been covered the manager can invoke the formal Capability Procedure.

Where an employees under performance is of a serious nature, e.g. where the consequences may have a detrimental financial or health and safety impact, then the manager may use the formal stages of the Capability Procedure immediately.

## 6. Stages to the Capability Procedure – Formal Action



The timescales mentioned **can be shortened** if necessary, depending on the nature of the role and what is appropriate in the circumstances following a discussion with HR Services.

The manager may be accompanied at all stages during the formal process by an HR representative or by another manager. The employee has the right to be accompanied at the meeting by a trade union representative or a Council employed work colleague (not a family member). The representative is not there to respond to issues on the employee's behalf, but they may assist if there are mitigating circumstances which the employee finds difficult to share.

At any time during the process, but prior to the Final Capability Hearing, discussions about an exit strategy may take place. This needs to be with mutual agreement by 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.

Where there have been periods of short-term leave or absence, the Council reserves the right to extend the review period. In the case of long-term leave (i.e. sickness absence/maternity), the review period will be suspended until the employee returns to work.

## 7. Stage One

If performance does not improve at the informal stage, the employee should be informed that the formal Capability Procedure will be invoked, and a formal PIP needs to be agreed. The manager should write to the employee inviting them to a meeting using the template letter (Appendix B).

At the meeting, the employee should be informed that 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 or a Council employed work colleague (not a family member) throughout the formal process. The primary role of the representative is to support the employee.

During the meeting, a **Performance Improvement Plan (PIP)** (Appendix A) should be agreed and put in place; this will be live **for up to three months**. The PIP should include:

The areas of work or behaviours which are unsatisfactory, and the level of improvement required in these areas

The support and training to be given to the employee to assist them to achieve the level of improvement required. For example, on the job training, training courses, more regular one to one meetings or supervision with their manager, temporary changes agreed to deal with any personal issues affecting their performance (for example change in hours)

Any changes the employee has agreed to make, for example change in attitude/behaviour towards the job and other people

The method to be used to monitor the performance needs to be discussed; this could be feedback from customers, non-achievement of work objectives or observations from the manager.

The line manager should hold regular **review meetings** with the employee during the review period and this should be agreed during the meeting. Following the meeting, the PIP will be sent to the employee with a letter confirming that they are being monitored under Stage One (Appendix C).

At the end of the review period, the employee will be invited to a **Capability Review Meeting (Stage One)** with the manager using the (Appendix D). The purpose of the meeting is to consider the employee's performance in line with the objectives set at the initial meeting. The employee must be given every opportunity to fully discuss the issues and will be expected to present relevant evidence and examples in line with the expectations set out in the PIP in addition to any mitigation.

At the conclusion of the meeting, the manager should consider whether or not the performance has improved to a satisfactory level. In reaching a decision the following should be considered:

Was the employee clear on what was required?

Were the standards/objectives clearly communicated to the employee?

Is there sufficient evidence of unacceptable performance?

Is there evidence of internal performance meetings and reviews

Is there evidence of support and training?

Were the timescales set for improvement reasonable?

Is there any mitigation that needs to be considered?

### **Possible outcomes of Capability Review Meeting (Stage One)**

Once a decision has been reached, the manager should confirm this in writing following the meeting (Appendix E). The following are possible outcomes:

If performance has improved, then the employee should be informed of this decision verbally then in writing. The improvement in performance must be sustained and if performance deteriorates at a future date, advice should be sought from HR Services.

If it is decided that performance has not been satisfactory then a **Stage One 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. This can be produced at this meeting or another meeting can be arranged to discuss.

It is possible to extend the review period, but only where there have been exceptional circumstances that have directly impacted on the employees ability to meet the requirements of their PIP and following advice from HR Services.

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

If, during the review period, the employee is showing no improvement or deterioration in performance, in line with the PIP, then the Capability Review Meeting (Stage Two) 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.

## **8. Stage Two**

If it is considered appropriate to continue monitoring performance, a meeting needs to be held as soon as possible after the Capability meeting to agree the PIP (Appendix F), if this has not already been produced during the Stage 1 Review Meeting. A review period of **up to two months** starts immediately after this meeting. During this period regular review meetings should be held. Following the meeting, the PIP will be sent to the employee with a letter confirming that they are being monitored under Stage Two (Appendix G).

At the end of the review period, the employee will be invited to a **Capability Review Meeting (Stage Two)** with their manager (Appendix H).

### **Possible outcomes of Capability Review Meeting (Stage Two)**

Once a decision has been reached, the manager should confirm this in writing following the meeting (Appendix I). The following are possible outcomes:

If performance has improved, then the employee should be informed of this decision verbally then in writing. The improvement in performance must be sustained and if performance deteriorates at a future date, advice should be sought from HR Services.

If it is decided that performance has not been satisfactory then a Stage Two 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. This can be produced at this meeting or another meeting can be arranged to discuss.

It is possible to extend the review period, but only where there have exceptional circumstances that have directly impacted on the employees ability to meet the requirements of their PIP and following advice from HR Services.

The employee needs to be informed that their performance will be reviewed at the **Final Stage** of the Capability Procedure. If performance does not improve in the review period of the PIP then the outcome could be demotion without pay protection or dismissal on the grounds of capability.

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

## **9. Final Stage**

If it is considered appropriate to continue monitoring performance, a meeting needs to be held as soon as possible after the Capability meeting to agree the PIP, if this has not already been produced during the review meeting (Appendix J). A review period of **up to two months** starts immediately after this meeting. During this period regular review meetings should be held. Following the meeting, the PIP will be sent to the employee with a letter confirming that they are being monitored under the Final Stage of the capability policy (Appendix K).

At the end of the review period, the employee will be invited to a **Final Capability Hearing** (Appendix L).

Ahead of the hearing, the manager will prepare a report (Appendix M) to outline relevant information in relation to the issues and provide documentation that has been considered so far including copies of performance improvement plans. This will be sent to the employee no later than five working days prior to the hearing.

The employee can submit any relevant information and a statement but they are not compelled to do so. This must be sent to the Hearing Officer no later than two working days prior to the hearing.

At the hearing, the manager and the employee will be present. A representative from HR Services should be present to advise the Chair, and the employee has the right to be accompanied at the meeting by a trade union representative or a Council employed work colleague (not a family member).

Hearings for employees up to Corporate Lead will be heard by the relevant Director/Head of Service/Service Lead. People and Organisational Development Committee or any relevant sub-committee will consider hearings for Deputy Chief Officers and above (Council Constitution, Part B 9.8).

Hearings within schools will be heard by the Head Teacher or an appropriate senior leader or committee.

## **Final Stage Outcomes**

Once a decision has been reached, the Chair should advise the employee of the outcome of the hearing and it should be followed up in writing (Appendix N). 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 Hearing Officer may consider whether it is appropriate to offer the employee a post at a lower level that is within their 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 stage two capability warning has been issued, and there is no significant or acceptable improvement in performance, dismissal may be considered as the appropriate outcome.

## **10. Fast Track Route**

In extreme circumstances, where poor performance is likely to present a risk to the business, employees 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 HR Services.

Where an employees under performance is of a serious nature then the manager may invoke the formal 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.

## **11. Appeal**

An employee has the right of appeal against a capability warning taken at any stage of the procedure. Any appeal must be submitted within 10 working days of receiving formal notification of the decision. Appeals against Stage One and Stage Two should be addressed to the relevant Head of Service. Appeals against the Final Stage should be addressed to the Director.

Appeals following Stage One will be to review the evidence. This will be heard by a senior manager.

Appeals following Stage Two will be a review of the evidence. This will be heard by a senior manager.

Appeals following the Final Stage will be a review of the evidence presented at the Final Stage Capability Hearing.

If an employee wishes to appeal against a dismissal, they must do so in writing to the appropriate Director within 10 working days of receipt of the letter confirming the dismissal. The appeal letter must also state the grounds of the appeal. The Director will then notify both the Head of HR and OD and the Head of Legal Services. The latter is responsible for arranging a meeting of the Council's Employment Appeals Committee, which will hear the appeal.

If a school employee wishes to appeal against a dismissal, they must do so in writing to the Head Teacher within 10 working days of receipt of the letter confirming the dismissal. The appeal letter must also state the grounds of the appeal. The Head Teacher will arrange for the appeal to be heard by the appropriate senior leader or committee.

## **12. Equality and Diversity**

South Tyneside Council and Governing Boards are committed to promoting equality and valuing diversity. An equality check on this policy was carried out in September 2023 and no equality check implications were identified.

Policy approved by Governors: May 2026

Date of next review by Governors: May 2027