

BILBROOK C E MIDDLE SCHOOL

CAPABILITY PROCEDURE

Adopted by Governors, 10th March, 2005

Reviewed March 2008

1. Scope and Purpose

- 1.1 The Council is committed to the delivery of high quality, relevant, and accessible services to the people of Staffordshire. To follow through on this commitment, and keep improving, it is essential that all staff are in all respects capable of undertaking the roles and responsibilities assigned to them. To this end, the Council will ensure that roles and responsibilities are clear and unambiguous, that what constitutes acceptable performance is defined, communicated and monitored against, and that all staff receive the support they need to achieve and maintain acceptable performance.
- 1.2 The Council acknowledges, as a prerequisite for the above, the necessity for a rigorous, fair, and consistently applied personal development review (PDR) process, operating within a broader performance management framework; training and development provision that encompasses all staff, is accessible, and is attuned to the requirements of the roles and responsibilities assigned to them; and a programme that delivers managers at all levels who are competent as managers, and in people management skills especially.
- 1.3 Applying all of the above to this policy, every dismissal because of a lack of capability indicates a possible failure somewhere in the system. It follows that the Council must learn from the application of this policy and continually improve its practices in the pursuit of a capable workforce.
- 1.4 This policy and the procedures set out below apply to all staff within scope of the NJC for Local Government Services ('Green Book'), and to all other individuals and groups employed by the Council who are not already covered by agreed procedures that serve a similar purpose. The procedures set out below are separate from, but complementary to, the Council's procedures for dealing with capability issues wholly or predominantly related to ill health, and the procedures for dealing with alleged misconduct.
- 1.5 This policy has been agreed with the recognised trade unions, and its application and outcomes will be reviewed with them. Not later than 2 years after its introduction the policy will be subject to formal joint review. The policy will be communicated widely by such means as are available to the Council, and prior to its formal introduction managers will be briefed on its effective application.

2. Key Principles

- 2.1 This policy and the procedures set out below are founded on the following principles, the common purpose of which is to ensure that: (a) staff are treated consistently and fairly, and in a way that is free from unlawful discrimination (b) that people who rely on Council services are at all times well served.
- (a) Staff who have difficulty achieving and/or sustaining acceptable performance will be helped to address and overcome their difficulties
 - (b) Before taking action in respect of any individual, the Council will examine its own performance in respect of staff who fall short of acceptable performance, and in particular will ensure that all of the following are in place and effective:
 - (i) Job descriptions and person specifications that are current and that accurately reflect job roles and role boundaries;
 - (ii) Recruitment and induction processes that are rigorous and appropriate to the role in question;
 - (iii) A recognised process whereby objectives are agreed for individual staff, reviewed at least annually and revised as need be, coupled with a recognised process for identifying and addressing training and development needs – all within the context of a broader performance management framework;
 - (iv) Competent management and support for all staff, consistent with the achievement and maintenance of acceptable performance.
 - (v) A safe system of work, where risks have been identified and addressed and where appropriate support systems are in place.
 - (c) Staff who fall short of acceptable performance will be entitled to be accompanied at all meetings called by management as part of the Formal Process.
 - (d) No one will be dismissed for reasons related to their capability unless the Formal Process has been exhausted and acceptable performance has not been achieved.
 - (e) Anyone dismissed under this policy and the procedures set out below will be entitled to appeal, and to have their appeal heard by a panel comprised of members of the Council's Regulatory Committee.

3. Standard Good Practice

3.1 People management is a core management competency, and everyone employed by the Council is entitled to be competently managed. The normal process of supervision should, therefore, highlight situations where staff fall short of acceptable performance. Where such situations arise, managers must discuss their concerns with the employee and try to establish the reason(s).

Action at this stage will take the form of a review of the following:

- (a) Whether objectives, performance standards and/or targets have been set, clearly communicated and understood, and whether these expectations are in all respects appropriate.
- (b) Whether there are factors outside work which could account for the under-performance, in whole or in part.
- (c) Whether information, training and support (including resources) have been made available that are appropriate having regard to the employee's duties and responsibilities, and sufficient having regard to their qualifications and experience.
- (d) Whether there have been changes in structures, systems, technology, working practices, or standards to which the employee may still be adjusting.
- (e) Whether relationships with colleagues and/or service users could account for the difficulties the employee is experiencing, which can happen when someone is subjected to harassment, bullying or other unacceptable forms of behaviour.
- (f) Whether problems with the system of work, or support systems (e.g. technical or administrative support), are impeding the achievement or maintenance of acceptable performance.

3.2 It is difficult to generalise about what may emerge from the above. In essence, however, any deficiency in the employee or systems operated by the employee that could be attributable to actions or omissions by management must be addressed. Where the employee has a disability, managers must take account of the duty to consider, and make where appropriate, reasonable adjustments to the work or system of work. The standards or outcomes required of the employee must be re-stated (and clarified if they are in doubt), and a period must be allowed at the end of which the employee will be expected to have achieved the required performance. This period must be reasonable in the relation to the improvement required, but short enough not to prejudice service delivery. All of the above must be communicated to the employee in writing, and if in doubt, managers must refer to the Directorates' HR unit.

- 3.3 If the standard process identifies factors outside work (or at any event unrelated to job content) that have caused or contributed to under-performance, managers should establish if the employee needs, and wants, help to address them. For example, if the employee is a parent or carer a request for reduced working hours would have to be considered seriously. If unsure about the help the Council can provide, managers must refer to the Directorate's HR unit. This also applies if the application of the above highlights apparent misconduct.
- 3.4 In most cases, applying standard good practice will be all that is needed to enable an employee to achieve and maintain acceptable performance. Where it is not, and where nothing further can be done in this regard, the formal process will be used.

4. Formal Process

- 4.1 When managers initiate the Formal Process they must inform and involve the Directorate's HR unit.
- 4.2 The Formal Process will commence with an interview or hearing; the parties involved are the employee, their manager, a member of the Directorate's HR unit and, as appropriate, the employee's trade union representative. Where the employee does not belong to a recognised trade union they can be accompanied by a colleague.
- 4.3 The employee must have prior knowledge of the interview and its purpose – sufficient to allow them to prepare for the interview and arrange to be accompanied.

Managers will use this initial interview to:

- (i) Reiterate what constitutes acceptable performance, having regard to the employee's role, the acknowledged standards, behaviours, etc. that attach to it, and any specific objectives or targets that have been set through the PDR process.
- (ii) Clearly explain and exemplify the shortfall between actual and acceptable performance.
- (iii) Attempt to establish the factors causing or contributing to the under-performance, having regard to the factors set out in 2(b) above.
- (iv) Obtain the employee's commitment to specific actions or behaviours with the object of achieving acceptable performance.
- (v) Set a period which has regard to the employee's role, the extent to which actual performance falls short of acceptable performance, and the nature

of the actions referred to in (iv), during which both parties will continue to address the issues, and at the end of which the employee will be expected to have achieved acceptable performance. Only very exceptionally should this period exceed 3 months.

- (vi) Set out how the employee's performance will be monitored during this period, bearing in mind that the object of the exercise is to enable and support the employee's own efforts. Any concerns arising during the period must be raised with the employee, evidenced by the manager, and addressed there and then.
 - (vii) Explain clearly, having regard to the following, the actions available to the manager if acceptable performance is not achieved.
- 4.4 Wherever possible, within 5 working days of the interview managers will provide a brief, dated note of the interview and its outcomes. Any specific training needs identified and agreed with the employee will be incorporated into the note, and these needs will be addressed during the improvement period. All parties present will receive the note and the employee will be invited to sign it, acknowledging receipt and agreement with the contents. If the employee concludes they cannot sign it they will set out their reasons in a note, and both notes will be sent to a member of the Directorate Management Team for review. The review must be concluded quickly and the findings communicated in writing to all concerned.
- 4.5 All relevant paperwork will be placed on the employee's personal file and will remain there for 12 months or as long as their performance continues to be an issue.
- 4.6 At the end of the improvement period – unless in the manager's view there is a compelling reason to bring it forward – there will be a further interview involving the same parties. If acceptable performance has been achieved, or very substantially achieved, the formal process will conclude. The employee will be informed that their performance will continue to be monitored, but as part of the application of standard good practice. This will be recorded on their personal file. If acceptable performance is maintained, after 12 months all material relating to the application of the Formal process will be removed from the file and destroyed.
- 4.7 If there has been some progress towards acceptable performance, but in the manager's view not sufficient progress, a second, shorter improvement period will be set, by the end of which acceptable performance must be achieved. The manager will provide a brief, dated note setting out the duration of the period and, in precise terms, what improvement is needed. Again, the employee will be invited to sign the note, indicating receipt and agreement, and again, if they decline they will provide a note of their reasons. The paperwork will be reviewed by a member of the Directorate Management Team and the findings

communicated to all concerned. The paperwork will be kept on the employee's personal file for as long as their performance continues to be an issue.

- 4.8 If at the end of the first improvement period (or the second, if 4.7 applies) progress towards acceptable performance has been neither sufficient nor sustained, there are only two courses of action available: redeployment or dismissal.
- 4.9 Opportunities for redeployment should always be explored, because it could be the case that the employee is simply in the wrong job. However:
- (i) Rather than the employee being free to apply for other jobs, the onus will be on the employing Directorate to establish whether suitable alternative employment is available.
 - (ii) The focus for the search should be the employing Directorate itself - only if nothing is available there will the employee be registered with Corporate HR and assisted by them.
 - (iii) Alternative employment must be available there and then; there will be no question of a minimum period on the Redeployment Register, as is the case when staff are displaced by restructuring.
 - (iv) If suitable alternative employment is identified, and this is lower graded than the employee's current job, pay protection will not apply.
 - (v) Confirmation in alternative employment will always be contingent on the employee completing satisfactorily a trial period of between one and three months, the actual period depending on the nature of the change. During the trial period the employee will remain on the establishment of the employing Directorate, and will be paid by them.
- 4.10 If there is no suitable employment available at the relevant time, notice will be given to terminate employment. The grounds for dismissal will be that the employee is incapable of discharging effectively their contractual obligations. Where appropriate, pay in lieu of notice may be substituted for actual notice.
- 4.11 When served notice, the employee is entitled to appeal. The appeal must be registered with the Corporate Director, Resources within 10 days of notice being served, and the latter will arrange for the appeal to be heard by a panel constituted for this purpose from the membership of the Regulatory Committee. The Council cannot guarantee that the appeal will be heard before notice expires.
- 4.12 It is imperative that during the whole of the above the Directorate's HR unit is closely involved.

5. Accountability

- 5.1 The employment contract is a two-sided relationship, with rights and obligations on both sides. This being the case, the purpose of a capability procedure is to identify and solve problems, not attribute blame. Both parties should engage fully in this process but whether or not this is the case, managing performance is a core management function and management must take responsibility for both process and outcomes.