

Capability Procedure

Summary

The Council recognises that its employees are its most important asset and that as an organisation it is only as good as the people it employs. We believe that the vast majority of employees meet or exceed the expectations of the roles they are assigned. When an employee is not meeting the performance standards of their role, or is not doing so consistently, this procedure will ensure that the issue is dealt with in a fair, equitable, consistent and supportive manner. Managers are responsible for the successful operation of this procedure within the service areas for which they are responsible, supported and advised by the Council's HR service as appropriate.

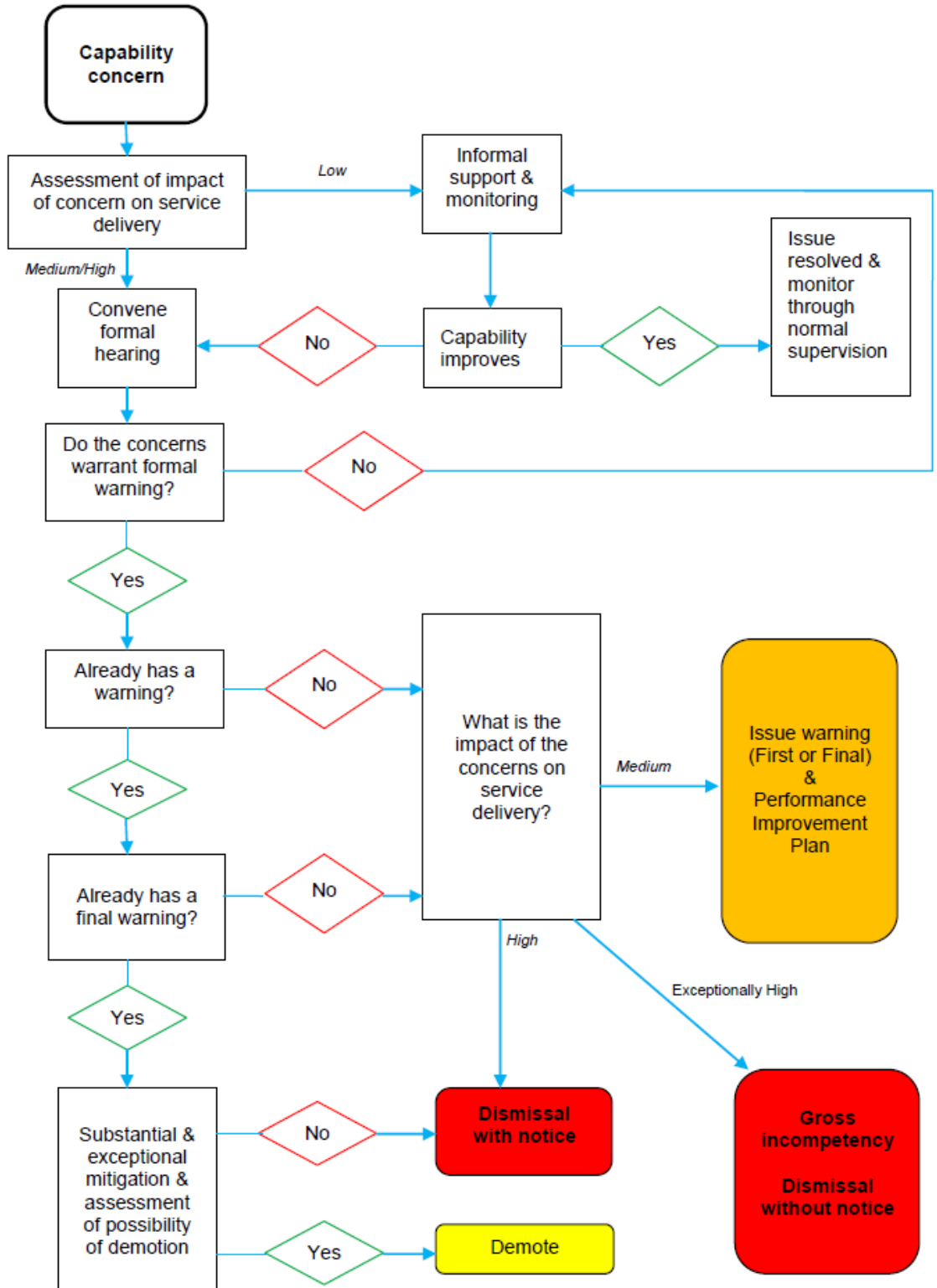
This procedure sets out the measures available to managers in these cases and, where a structured approach is necessary, what pattern it should follow. Correct application of this procedure ensures that an employee is given every reasonable opportunity to improve and, where this is not possible, that proper consideration is given to the alternatives before dismissal is considered.

It is based on the principles of the ACAS Code of Practice (No 1) on "Disciplinary and grievance procedures" and on the Council's Code of Conduct. The procedure is intended to cover any potential dismissals not explicitly covered by this or any other Council policy.

This procedure does not form any part of any employee's contract of employment and it is entirely non-contractual. It may be amended, withdrawn, suspended or departed from at the discretion of the Council at anytime. Everyone should ensure that they take the time to read and understand the content of this procedure and act in accordance with its aims and objectives. If you need support reading and/or understanding this procedure, please speak with your line manager.

Capability Procedure

Capability Management Flowchart



NOTE: Warning under other policies may be taken into consideration.
A right to request an appeal also follows the issuing of a warning or a decision to dismiss.

Capability Procedure

Quick Glance

[Who does this procedure apply to?](#)

[If an employee is on probation and there are performance issues will they be dealt with under this procedure?](#)

[What happens if an employee has a disability or difficulty in understanding English?](#)

[What happens if an employee has a warning under another procedure?](#)

[What does the council expect of its managers?](#)

[What does the council expect of its employees?](#)

[What is a “capability or performance concern”?](#)

[Can the concerned employee be represented?](#)

[Is there an employee assistance programme an employee can access?](#)

[Are there links with other procedures?](#)

[How are individual performance concerns managed?](#)

[Will fact finding \(an investigation\) take place?](#)

[If an investigation is to take place who will it be?](#)

[What is the purpose of fact finding \(an investigation\)?](#)

[Does an employee have to co-operate in the performance management process including any proceedings?](#)

[What happens if an employee achieves the required improvements?](#)

[When might suspension be appropriate?](#)

[What if the incapability/unsatisfactory performance may involve harm or the risk of harm to children, young people or vulnerable adults?](#)

[What is the purpose of the performance management hearing?](#)

[How much notice does an employee need to be given to be called to a performance management hearing?](#)

[Can the employee be represented during the performance management process?](#)

[Does the employee have to attend a hearing?](#)

[What are the potential outcomes of a performance management hearing?](#)

[What if one warning has already been issued?](#)

[Can someone be given a final warning without having received a first written warning?](#)

[Can the employee request an appeal against the outcome of a capability performance management hearing?](#)

How will I be notified of any decision?

Capability Procedure

Who does this procedure apply to?

The policy applies to all employees at Gloucester City Council except Statutory Officers. The rules relating to suspension and disciplinary action in respect of the Head of Paid Service, Monitoring Officer and Chief Finance Officer are contained in the Council's Constitution. The procedure is governed by statutory regulations

If an employee is on probation and there are performance issues will they be dealt with under this procedure?

No. For all new employees and existing employees to whom a probationary period applies, any measures to deal with performance should be dealt with under the council's probationary procedure.

What happens if an employee has a disability or difficulty in understanding English?

If the employee has a difficulty at any stage of the procedure because of a disability or understanding English, he/she should raise this with their manager in the first instance so they may assist as appropriate.

What happens if an employee has a warning under another procedure?

The council has three inter-related procedures through which concerns about an employee's performance may be formally addressed. These policies and procedures cover three areas of employee performance:

[Disciplinary and Dismissals Procedure](#) (conduct). Capability Procedure (standards of work performance).

[Sickness and Absence Procedure](#) (this covers both short-term and long-term sickness absence).

There are up to three formal levels of sanction in each procedure:

First written warning. Final written warning.
Dismissal with notice (or payment in lieu of notice) – or summary dismissal in the case of gross misconduct.

Under each procedure, a formal warning remains in force for 12 months (or, in exceptional cases only, for a specified longer period). Any 'live' warning(s) issued in respect of one procedure may be taken into account in determining the subsequent level

Under each procedure, a formal warning remains in force for 12 months (or, in exceptional cases only, for a specified longer period). Any 'live' warning(s) issued in respect of one procedure may be taken into account in determining the subsequent level of sanction if other concerns arise but in respect of a different performance area. For example, if an employee has a 'live' first written warning for poor work performance they may subsequently receive a final written warning for an unsatisfactory sickness record.

Capability Procedure

Where this type of situation arises, the formal hearing and any subsequent warning (or dismissal) will be carried out through the [Disciplinary and Dismissals Procedure](#), which operates as the default procedure where the concerns relate to a combination of two or more areas of the employees performance (i.e. a mixture of conduct, capability and/or sickness absence).

In the event that any concerns relate solely to capability or sickness absence, the employee may, having given appropriate consideration to the facts and circumstance, receive a first written warning, final written warning and/or be dismissed under the Performance Management Capability Procedure or [Sickness and Absence Procedure](#) (i.e. the matter will not 'default' to the Disciplinary and Dismissal Procedure in such circumstances).

What does the council expect of its managers?

With respect to this procedure the council expects managers to:

- Carefully select, provide induction and continuously develop their employees.
- Make sure employees are clear about the policies, procedures and standards that apply and what is expected of them.
- Regularly review the performance of employees and respond to any situations where an employee's performance is unsatisfactory or otherwise gives cause for concern.
- Give employees regular feedback on their work performance.
- Have early discussions with the employee on problems, possible causes and solutions.
- Managing employees' performance informally and formally if required.
- Preparing documentation to be presented at performance management review meetings/hearings,
- e.g. details of unsatisfactory performance. Conducting performance management review meetings/hearings.

What does the council expect of its employees?

The council expects its employees to:

- Maintain satisfactory job performance.
- Be responsible for their own development.
- Raise with their manager any problems that are affecting their work.
- Accept responsibility for their own work performance
- Respond constructively to advice, guidance and development provided by their manager
- Be flexible and cooperate with changing work requirements.

Capability Procedure

What is a capability or performance concern?

A capability concern is where an employee is thought to lack skills or knowledge necessary to effectively perform their role, or to do so consistently. Employee underperformance may originate in a lack of capability or it may be a conduct issue. It is the *former* which this procedure is designed to address; the latter is covered by the [Disciplinary and Dismissals Procedure](#).

Can the concerned employee be represented?

Employees who are the subject of action under this procedure have the right to advice and guidance and to be accompanied/ represented by a trade union representative or work place colleague at any stage of the formal procedure. This does not extend to representation at day to day management/supervision meetings, or any informal action. In exceptional circumstances, a representative who is neither a work place colleague nor a trade union representative may be permitted, for example, if there are medical reasons or as a reasonable adjustment. This will be at the sole discretion of the officer conducting the meeting (i.e. the Manager for performance management review meetings and the Hearing Chair for performance management review hearings). Legal representation, specialist employment law Advisors and similar, will not be allowed.

Is there an employee assistance programme an employee can access?

Yes, the **Employee Assistance Programme (EAP)** which is independent of the council and any employee can contact them for support. Freephone 0800 174319 or visit <http://www.carefirst-lifestyle.co.uk/>. This service is available 24 hours a day, seven days a week. (**Username: and Password: tbc**”).

Are there links with other procedures?

A distinction should be drawn between the need to take action under this procedure and other action due to:

[Sickness and Absence Procedure](#).
[Disciplinary and Dismissals Procedure](#).

Capability Procedure

How is individual performance concerns managed?

When a manager first becomes aware of a performance capability concern, they should address it in discussion with the employee to explore the situation and potential solutions. If the employee's performance doesn't improve quickly enough, the manager may do some more fact-finding (an investigation) and assess the situation to get a full grasp of the nature and degree of the under-performance, as well as potential reasons for it.

If the manager's assessment indicates that a more structured approach would be appropriate, then a performance management hearing may be convened.

Will fact finding (an investigation) take place?

If it is deemed by the manager that it is appropriate to carry out an investigation then an investigating officer will be appointed.

If an investigation is to take place who will it be undertaken by?

The investigating officer will usually be the employee's manager, although the council has the right to appoint any suitable employee, or in exceptional cases, a suitably qualified third party. Employees are required to co-operate with any investigation and, if requested to do so, to attend an investigation meeting. The employee who is subject to the performance concern may at the manager's discretion be represented by a trade union representative or work place colleague.

What is the purpose of fact finding (an investigation)?

The purpose of the investigation is to establish: The nature of the alleged concern; The employee's response; Any supporting evidence and; Any other relevant circumstances. The outcome of the investigation will be a recommendation both that there are specific issues to be addressed and should be dealt with at a formal performance management hearing, or that there should be no formal action.

Does an employee have to co-operate in the performance management process?

All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales are followed without delay.

What happens if an employee achieves the required improvements?

If the employee subsequently achieves the required improvements, then this should be acknowledged and the employee should be informed of the need to maintain that improvement. A copy should be placed on their Personal file. The employee may comment on the content of the note if he or she wishes, and this should also be placed on the Personal file..

Capability Procedure

When might suspension be appropriate?

Suspension is rarely necessary in a capability situation. However, if it isn't clear whether a matter is a capability or a disciplinary issue, it may sometimes be appropriate for an employee to be suspended for the shortest possible time while an assessment of the case is made. In addition, where an employee's underperformance presents a risk to themselves or to others, suspension may be appropriate.

In such serious cases, wherever reasonably possible, a temporary transfer to other duties should be considered as an alternative, whilst further consideration is given to the situation.

What if the incapability/unsatisfactory performance may involve harm or the risk of harm to children, young people or vulnerable adults?

An allegation may indicate that an employee behaved in a way that: has or may have harmed or abused a child or vulnerable adult; possibly committed a criminal offence against or that is related to a child or vulnerable adult or; behaved towards a child or vulnerable adult in a way that indicates they are unsuitable to work with children or vulnerable adults.

If the allegation covers any of the above then any immediate further risk must be addressed and then advice must be sought quickly from HR, the Local Authority Designated Officer for Children's Services 01452 426994 or the Local Authority Head of Safeguarding Adults 01452 427556. The employee should not be informed and the manager should not take any further steps until this advice been obtained.

What is the purpose of the performance management hearing?

The performance management hearing is an opportunity for the organisation to formally note its concern about the employee's capability or performance and to state explicitly the impact the alleged underperformance is having; the employee can say if they disagree with the manager's view, and explain any other factors that might be affecting their performance that haven't yet been recognised.

If, after representations and evidence have been considered, it is still considered that the employee's performance requires improvement, the Chair of the hearing will give the employee a warning that the individual's work performance needs to improve.

The warning may be at one of two levels:

- A first written warning
- A final written warning

In addition, the first time an employee receives a warning, they automatically lose their next point of incremental progression or be reduced down the increment scale if they are at the top of the salary band. The warning will remain in place for 12 months, even if their performance improves during that period.

Capability Procedure

An employee under a warning must be given a clearly-structured and supervised plan for improvement which may be done immediately or in a separate discussion, after the performance management hearing. More details on the use of the warning and the performance management plan are given in the relevant guide.

How much notice does an employee need to be given to be called to a performance management hearing?

The employee should be given at least seven calendar days notice of the hearing

Can the employee be represented during the performance management process?

Yes, employees are free to seek advice at any time and can be represented / accompanied by a trade union representative or work place colleague at any formal performance management hearings under this procedure.

Does the employee have to attend a hearing?

Yes, the employee must make every effort to attend the hearing and their absence will only be considered acceptable in exceptional circumstances. If the employee does not attend the performance management hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance.

If non-attendance is due to a medical reason, the employee must inform the hearing officer as soon as possible. Written confirmation together with a Fit note must be submitted, stating specifically the reasons why the employee is unable to attend the performance management hearing (a Fit Note which merely states that the employee is unfit for work is not sufficient; the certificate must relate specifically to the employee's ability to attend the performance management hearing). The employee may also be referred to Occupational Health to ascertain whether they are fit to attend the hearing.

If it is decided to adjourn the performance management hearing, the hearing will be rearranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. Where an employee is unable to attend, they may arrange for representation at the hearing in their absence, or make written submissions.

Capability Procedure

What are the potential outcomes of a performance management hearing?

A performance management hearing will normally have one or more outcomes:

1. No further action.
2. Take action up to but not including a written warning i.e. informal warning/a letter of caution.
3. A final opportunity to improve performance.
4. A formal warning - issue a first written warning.
5. A final written warning.
6. Increment withheld or reduced by one scale point if at the top of grade.

A combination of 3 to 6 above

Where considered appropriate an outcome could also be:

7. Demotion and/or transfer as an alternative to dismissal to a similar or lower graded post if a role is available.
8. Dismiss the employee, with notice.
9. Dismiss the employee, without notice (summary dismissal)

What if one warning has already been issued?

When an employee receives a warning whilst subject to a prior warning, the performance warning will normally be one step higher than it would have otherwise been.

Can someone be given a final warning without having received a first written warning?

Yes. An employee can be given a first or final warning without having been previously been subject to any informal action or previous formal warning. However, this measure is reserved for cases where urgent and serious performance concerns are considered to impact substantially on service delivery for example, or for cases where underperformance puts the safety and well being of service users or other employees at risk.

Can the employee have an appeal against the outcome of a performance management warning?

An employee may appeal against the reasonableness of a formal performance management warning imposed on them as the result of a formal hearing. There is no right to appeal against any informal action that may be taken.

An appeal will be heard by another senior manager not previously involved with the case, and the employee can be represented by a workplace colleague or a trade union representative.

Any appeal must be made in writing within 14 calendar days of receiving the warning letter stating the reason(s) for the appeal. The warning or dismissal will remain in force pending the outcome of the appeal.

Capability Procedure

How will I be notified of any decision?

Meetings will only be fully minuted or audio recorded in exceptional or complex cases. In all cases a note will be produced detailing key points in the decision making process. In cases where a formal sanction may be issued the employee must be notified in writing of the outcome of the hearing. Similarly, in formal cases, a note of the hearing should be kept and where dismissal could be involved, consideration should be given to having a note-taker present or using recording equipment. Employees are not permitted to make their own audio recording of a capability meeting without the knowledge of those present.

[Back to top](#)