

Capability Policy

1. Purpose of the policy

To set out the action which will be taken to encourage improvement in individual performance with regards to work standards, quality, productivity or other capability factors. Capability is defined by Section 57 (4) of the Employment Protection Consolidation Act 1978 as the ability to perform required work to an acceptable standard by reference to skill, aptitude, health or any other physical or mental quality. It is also recognised by the CIPD that capability is something that tends to be outside of the officer's control.

2. Who is covered?

This policy does not apply to:

- The Chief Executive and officers covered by JNC for Chief Officers of Local Authorities
- Self employed and agency workers
- Termination of temporary or fixed term employment for which an employee has been specifically engaged
- Employees during their probation period

This procedure shall be applied in conjunction with the National Conditions of Service.

There is a separate Disciplinary policy for instances where staff conduct is of concern.

Representation

Breckland Council is represented by Unison and The Employment Relations Act 1999 entitles staff to have the right to be accompanied by a trade union representative.

3. Principles

There will be consultation with the employee

The offer of support and assistance will be made

In cases of ill health employees will be asked to co-operate with our Occupational Health Provider

There will be consideration of alternative employment (if applicable) or reasonable adjustments in the case of employees that are covered by the Disability Discrimination Act 1995

Staff should be aware of the consequences if there is unsatisfactory improvement.

4. Informal meeting

If you are exhibiting an inability to perform your duties, your manager may hold a meeting with you in order to discuss the problem. A record of the meeting will be made and kept on file.

If this fails to bring about the desired improvement, the formal capability procedure may be followed.

5. Formal capability procedure

If the manager decides that performance or attendance standards are not being met, then they may start the process with formal proceedings instead of informal meetings. You will be asked to attend a first formal meeting. You will be informed in writing of the date, time and place of the meeting. You must take all reasonable steps to attend the meeting. If for any reason the date is not suitable, you should advise Human Resources of an alternative time when you are available. This should be within 5 working days of the original date.

Before the meeting you will receive details of the nature of the unsatisfactory performance/attendance. You will have an opportunity to respond to this information during the meeting. You have the right to be accompanied to the meeting by a representative of a recognised trade union or a colleague (willing to accompany to you). Your companion can give you advice and support and address the meeting but may not answer questions on your behalf.

After the detail of the issue has been discussed, the manager will decide on the next course of action. The following options may be considered:

- a) Revise agreed action plan and targets.
- b) No further action if fully acceptable performance has been achieved.
- c) Issuing of a formal written warning stating the nature of the unsatisfactory work performance/attendance as discussed at the review meeting, the action requiring to improve performance, any further training or support that is to be provided, the date at which the issues would be subject to a final formal review and the employee's right to appeal.

The final review meeting will take place in the same format as above if performance/attendance remains unacceptable. The following options may be considered:

- a) Revise agreed action plan and targets.
- b) No further action if fully acceptable performance has been achieved.
- c) Issuing of a formal written warning stating the nature of the unsatisfactory work performance as discussed at the review meeting, the action requiring to improve performance, any further training or support that is to be provided, and employee's right to appeal. The letter should contain the date at which the issues would be subject to a Capability Hearing, and that this may lead to the employee's dismissal on capability grounds.

6. Capability Hearing

You will be informed in writing of the date, time and place of the hearing. You must take all reasonable steps to attend the hearing. If for any reason the date is not suitable, you should advise Human Resources of an alternative time when you are available. This should be within 5 working days of the original date.

Before the hearing you will receive details of the case made against you. You will have adequate time before the hearing and an opportunity to present your side during the hearing. You have the right to be accompanied to the hearing by a representative of a recognised trade union or a colleague (willing to accompany to you). Your companion can give you advice and support and address the hearing but may not answer questions on your behalf.

The Presiding Officer of the meeting will consider the options which might include:

- a) Revise agreed action plan and targets with a timescale when the matter will be subject to a further final review meeting.
- b) Consider suitable alternative employment
- c) To determine that acceptable performance has been achieved

- d) To dismiss the employee if acceptable performance has not been achieved, nor is likely to, based on the evidence available.

7. Appeals

If you are issued with a warning or are dismissed you can appeal against the decision. You must appeal in writing to the Human Resources Manager within five working days of the decision being communicated to you.

You will be informed in writing of the date, time and place of the appeal hearing. You must take all reasonable steps to attend the hearing. If for any reason the date is not suitable, you should advise Human Resources of an alternative time when you are available. This should normally be within 5 working days of the original date.

Where reasonably practical, the appeal hearing will be dealt with by a more senior manager (or different manager) than attended the original hearing.

You have the right to be accompanied at the appeal hearing by a representative of a recognised trade union or a colleague (willing to accompany to you). Your companion can give you advice and support and address the appeal hearing but may not answer questions on your behalf.

After the appeal meeting you will be informed of the final decision. Should any warning or penalty be withdrawn, reference to action will be removed from your personal file.

The appeal hearing need not take place before the dismissal or action takes effect.

8. Data Protection and Record Keeping

Records of disciplinary hearings will be kept confidentially on personal files in accordance with the Data Protection Act 1998. This record will be the official record. If after 12 months, your performance has been satisfactory and there have been no further issues, the warning will be disregarded in any future capability action.

9. Colleagues Asked To Attend a Capability Meeting/Hearing

You may be asked to attend a meeting/hearing either as a companion or as a witness. Employees will be granted reasonable time off with full pay to fulfil this duty.

10. Dismissals

Breckland Council will take a decision to dismiss at a time that is appropriate to the individual circumstance of the case. This is in no way governed by whether the employee concerned has exhausted their sick pay entitlement.

11. Fixed Term Contracts

Workers that are on short term contracts will not have their contracts extended solely for the purpose of completing capability proceedings.

12. Alternatives to Dismissal

Breckland Council reserves the right to regard actions short of dismissal as alternatives to dismissal if the Presiding Officer deems them to be appropriate.

13. Link With Disciplinary Policy

If at any stage in the procedure, following investigations, a manager feels that the causes of the poor performance/attendance are of a casual nature, the disciplinary policy will be invoked.