



## Capability Policy

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## Document Location

This document is held by Tamworth Borough Council, and the document owner is HR.

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## Revision History

Revision Date	Version Control	Summary of changes
April 2020	V1	A revised policy to deal with capability issues, separating the policy from conduct concerns
October 2022	V2	Amended following HR feedback & included information for home and hybrid working

## Key Signatories

### Approvals Creation and Major Change

Name	Title	Approved
Appts & Staffing		September 2022

### Approvals Minor Change and Scheduled Review

Name	Title	Approved
Anica Goodwin		
TULG		

### Approval Path

#### Major Change

Originator  
 Owner  
 TULG  
 CMT  
 Appts & Staffing Committee

#### Action

HR  
 Head of Paid Service  
 Consultative Group  
 Corporate Approval  
 Council Approval

#### Minor Change

HR  
 TULG  
 Director

Submission  
 Consultative Group  
 Delegated Approval

### Document Review Plans

This policy/ procedure will be reviewed on a 3 yearly basis unless it has:

- A monetary value included within it, in which case an annual review will be required, and/ or
- A legislative change is required as directed by government.

### Distribution

The document will be distributed through Astute as a MANDATORY policy and will also be available on the Intranet.

### Security Classification

This document is classified as SEC 1 Routine with access restricted to Tamworth Borough Council Staff and business partners.

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## **1 Introduction**

- 1.1 Tamworth Borough Council (TBC) is committed to ensuring that employees perform their jobs to an acceptable standard. The purpose of this procedure is to provide a process whereby all employees are required, with support and encouragement to achieve and maintain standards of job performance and outline the actions to be taken if these standards are not met.
- 1.2 The procedure is consistent with TBC's vision, mission and values.
- 1.3 TBC will not unlawfully discriminate and will ensure all actions are taken in line with the requirements of the Equality Act 2010 which includes preventing any unlawful discrimination of the protected characteristics of age, disability, gender reassignment, marriage and civil partnerships, pregnancy, maternity, race, religion or belief, sex and sexual orientation.
- 1.4 The SMART Working model driven by the Recovery & Reset programme is explicit that performance will be measured by outcomes and outputs. An 'outcome' is what the organisation wants to achieve, an 'output' is an action or items that contribute to achieving an outcome.
- 1.5 TBC strives to embed an outcome and output-based work culture which encourages employees to achieve a clear set of objectives. Leaders need to clearly define the objectives and establish a timescale in which they should be delivered. This is a move away from an input-based work culture which measures worker effectiveness by time spent at a desk or performing tasks. Therefore, the outcome is the metric of measurement, not the time or method taken to get there.
- 1.6 Assessing an individual's performance by their output requires a thorough objective setting process, with clear understanding and agreement on how this will be measured and over what timescale.
- 1.7 Performance will be monitored on a regular basis via our PDR/ Appraisal process please refer to the relevant documentation.

## **2 Scope**

- 2.1 The policy applies to all employees under the NJC terms and conditions of employment. The Chief Executive and employees employed under Chief Officer "conditions of service" (Joint Negotiating Committee (JNC) terms and conditions) are covered by the JNC conditions of service for Chief Executives and Chief Officers.

## **3 Remote Working**

- 3.1 In theory, the principles of good performance management apply equally in the context of remote working as in a traditional office or site-based environment. However, there are additional factors that need to be considered and challenges that may arise.
- 3.2 It is important to be aware of the environment in which the employee is working and they have the appropriate equipment and workspace to do their job to the right standard. Where work is not of the right standard this needs to

be discussed. This will take the form of a phone call, Teams meeting or on the designated site attendance day. The meeting must be private with family members or housemates not in the room or overhearing the conversation.

3.3 There are a few things to consider relating to how the manager and team work collaboratively when not in the same location as this may impact on individual capability.

- Make sure every team member is clear about how you will work together remotely, how you will keep each other updated and how frequently.
- Remind your team about the big picture and how their work fits into it.
- Clarify everyone's roles, including your own.
- Make sure expectations, goals/objectives, responsibilities and performance indicators are clear.
- Review goals/objectives regularly and adjust as needed.
- When managing remotely, trust is more important than control. Focus on results rather than activity. Remote working requires time management skills, the ability to work without close supervision, self-motivation and flexibility.
- Virtual teams deal with more challenges than face to face teams because they rely more on electronic communications with an increased risk of misunderstanding and misinterpretation of messages as it is harder to read body language, tone and other visual and audio cues.
- If providing feedback on performance concerns, using Teams or in person to ensure that you are able to take on board the employee's reaction as the feedback is delivered. Delivering this type of feedback via email can come across harsher than intended and isn't the ideal vehicle for this feedback.

## **4 Policy**

### **4.1 Definition of poor performance**

4.1.1 Poor performance as a result of capability arises where an employee's failure to achieve and maintain the required standards of their role is due to lack of skill or knowledge rather than poor behaviour. This may be due to an innate lack of ability, skill, knowledge and experience or a lack of adequate training and/or supervision. In these cases, employees will be given reasonable support and encouragement to reach a satisfactory level of performance. One of the key distinctions between capability and conduct is that lack of capability will usually be outside the employee's direct control, whilst the same employee will have control over their conduct at work. For clarity, capability is where the employee 'can't do' whilst conduct is concerned with behaviour where they 'won't do'.

4.1.2 Capability does not cover situations outlined below which should be dealt with under the following policies:

- Deliberately/wilfully ignoring reasonable instructions/inappropriate behaviour or breaches of the Code of Conduct - the Disciplinary Policy should be used.
- Below standard level of attendance or ill health capability – the Attendance Management Policy should be used.
- For staff in their probationary period - Probationary Period policy should be used.

4.1.3 It is not always clear whether an employee's poor performance is due to capability or conduct. Where line managers are unclear as to which is the appropriate policy to apply, they must contact the Human Resources Department for guidance. This guidance must be sought before any proceedings are raised with the member of staff as commencing action under the wrong procedure can result in serious confusion for the employee and risks to the organisation. Once further information is known, the employee may switch from the Capability to Conduct procedure and vice versa.

## **4.2 Performance Review meetings**

4.2.1 TBC will ensure that employees achieve and maintain a satisfactory performance standard through the Performance Management Framework. It will ensure that standards are established, performance is monitored and employees are given appropriate training and support to meet these standards. Performance standards will be agreed between the line manager and employee during the annual Personal Development Review (PDR) and regular review meetings. If an employee fails to achieve or maintain satisfactory levels of performance, the line manager must try to deal with these informally before commencing the formal procedure. It may be that the employee is not aware of the standards of work performance expected of them, that standards have changed or there may be a genuine lack of capability to undertake their role/duties.

4.2.2 There are several tools that line managers can utilise to 'set' standards required of a role for them to use with their employees. Monitoring employees and having regular performance review meetings in order to make sure they are meeting these standards should help to identify and deal with any issues relating to poor performance, before taking formal action. PDR objectives should be Specific, Measurable, Attainable, Relevant and Time-Bound, (SMART) with objectives being reviewed to monitor progress. Managers can use the following guidance to help in both the informal and formal stages

4.2.3 Tools to set standards of performance measures include:

- Re-induction/Induction for employees who change jobs, as well as for new employees;
- Team meetings;
- Additional line manager support and guidance;
- One to one performance review sessions (increased frequency);
- Peer coaching/mentoring;
- Performance Development Review meetings;
- Arranging relevant training or retraining;
- Providing short term workload relief to enable the employee to catch up;
- This is not an exhaustive list, if other reasonable tools are available that could assist then they can be considered.

4.2.4 If it is established that the performance problems are related to the employee's personal or domestic life, where appropriate, the necessary counselling through Employee Assistance Programme or alternative working arrangements (such as a change in working hours) should be considered.

- 4.2.5 If the performance problems relate to a health issue, a referral to Occupational Health must be made and any recommendations in the OH medical report should be reasonably considered. If the performance problems are related to a disability, then agreed reasonable adjustments must be provided and implemented.
- 4.2.6 The Capability Procedure should not be considered or instigated until all agreed reasonable adjustments are in place and the employee has had time to adjust to these. It is expected the maximum timeframe should be 3 months. The line manager should also refer to Human Resources for advice.
- 4.2.7 The line manager must advise the employee, when managing the situation informally that they are addressing performance issues as the standard for the job role is not being met in performance meetings and make it clear that failure to meet the required standard within the stipulated timescale may result in the Capability Procedure being instigated.
- 4.2.8 The line manager must detail the areas for concern, providing examples to ensure that the employee is clear about the concerns and record any action or support provided to the employee as this will support any decisions or action taken. The employee must be provided with a copy of the performance review note. The template at Appendix 1 can be used for both the informal and formal stages of the policy.
- 4.2.9 The employee is required to participate fully in any performance review, training, coaching, mentoring, counselling or Occupational Health support interventions offered to help them improve.
- 4.2.10 Where the line manager identifies that the employee has not responded to performance review discussions and their performance remains unacceptable, they must not wait until the annual a PDR meeting before escalating to the Capability Procedure. Timescales may vary depending on the nature and demands of the role, but it is expected that there should be an improvement within **1 to 3 months** of performance issues being raised in review meetings. If this is not achieved, the line manager must contact Human Resources for advice and guidance, the employee must also be informed of the decision in writing.
- 4.2.11 Where the employee is receiving coaching with a peer and there are recurring performance issues or continued concerns that the standard for the role is not being met then this must be referred to the line manager so that they can manage the situation.
- 4.2.12 If the employee is unable to carry out their job because of their disability, despite all reasonable adjustments having been provided, redeployment may need to be considered and discussed with HR. If suitable posts cannot be identified, the case may proceed directly to Stage Three of the policy and the employee's contract may be terminated on capability grounds.

### 4.3 Stage One

- 4.3.1 A meeting, chaired by the line manager, must be convened within 14 calendar days of the employee being advised of the decision to instigate the formal



Capability Procedure Stage 1. Before the meeting is held, a letter must be sent to the employee, together with a copy of the Capability Procedure. Relevant information on the areas of poor performance, an explanation of why they are not meeting the standards expected for the role and any previous actions taken to improve the poor performance must be attached. The line manager or employee may request that a representative from Human Resources attends the meeting.

- 4.3.2 The employee has a right to be accompanied to the meeting by a Trade Union representative or a work colleague at all stages of this procedure. They do not have the right to representation by anyone outside of TBC. In exceptional circumstances employees may request to be accompanied by someone external to the organisation for example a regional Trade Union representative, but this request must be made in advance and under no circumstances should this include family, members of the employee's household or a legal representative. A reasonable adjustment may be needed for an employee with a disability, for example, the provision of a support worker or advocate with knowledge of the disability and its effects.
- 4.3.3 The line manager will chair the meeting, outlining action taken to date. The employee or their representative may address the meeting to put the employee's case, sum up the employee's case and respond on the employee's behalf to any views expressed at the meeting. The representative may not, however respond to specific questions that have been put to the employee. However, the employee may request an adjournment in order to speak to their representative in private.
- 4.3.4 If their chosen companion cannot, for good reason, attend on the original date proposed, the employee may ask for the meeting to be postponed to a reasonable time within 5 working days to allow the representative to attend.
- 4.3.5 At the meeting, the line manager will:
- Explain clearly the shortfall between the employee's performance and the required standard of the role; providing evidence and examples.
  - Detail the support offered or provided to improve performance.
  - Assess the situation carefully in order to identify if the failure to meet performance levels is due to the employee's ability, skills, experience, health, lack of attention to detail or whether it is due to a lack of training, resources (including a high workload). This would also have been discussed in the supervision stage but this should be repeated in case new issues have emerged.
  - Examine the cause(s) of poor performance and determine what remedial assistance is required. This may include further training, retraining or closer performance management and support from a peer/coach/mentor.
  - Determine who will be responsible for organising or providing the training and support and set a timetable for this action.
  - Obtain the employee's commitment to reaching the required standards.
  - Agree on a monitoring system during this period through a Performance Improvement Plan which will be regularly reviewed detailing objectives, assistance offered, clear measurable targets, required standard of improvement and timescales for improvement.

- Advise the employee of the consequences of failing to meet the required standard. i.e. progression through the Capability Procedure with the worst case scenario being dismissal due to incapability.
- 4.3.6 The timescales for review of progress will clearly depend upon the level of the improvement required, the importance of the area in which improvement is required and operational impact. The employee must be given a reasonable opportunity to improve, normally within a timescale of between 1 – 3 months.
- 4.3.7 The line manager must send the outcome of the Stage One meeting letter, note of the meeting and Performance Improvement Plan to the employee within 5 working days. This must include; specifying the areas of performance that have not reached the required standards, the required improvement, the consequences of insufficient improvement, training needs identified, timescales for review, timescales for progress reporting and support. Advice can be obtained from HR on setting the Performance Improvement Plan.
- 4.3.8 Regular meetings must take place during the review period to assess progress against the Performance Improvement Plan and ensure that the employee is receiving the necessary support to improve. Review dates must be agreed and communicated to the employee in advance. All review meetings and performance management sessions must be documented, signed by both parties and copied to the employee. If there is a disagreement relating to the accuracy of the notes, the employee's amendments should be attached as an addendum.
- 4.3.9 At the end of the Stage One improvement period, the line manager will convene a Stage One review meeting to review their overall performance and decide whether the required improvement has been made; performance will be measured against the Performance Improvement Plan. The meeting will be structured as outlined in the bullet points on section 4.3.5. Before making this decision, the line manager must be satisfied that all support has been provided during the review period. Likewise, if the employee has been absent from work due to sickness during the review period, the procedure will be paused and reconvened as part of the return-to-work plan. Advice must be sought from HR, as appropriate.
- 4.3.10 There are 3 possible outcomes:
- (a) If sufficient improvement has been made, the employee will be advised of this in writing and the Capability Procedure will cease. Should the same performance standards become unacceptable again within six months of cessation, after discussion with Human Resources, the procedure may recommence at the stage where it was previously halted.
- (b) Where there is evidence of some improvement, but still not meeting the standards of the role, the employee progresses to Stage Two of the procedure.
- (c) If insufficient improvement has been made and there is clear evidence that the individual has failed to meet the requirements of the job, or is deteriorating, and has no prospects of meeting the required performance during an acceptable timeframe, the employee should be advised in writing,

within 5 days of the meeting, that they have failed to make the required improvement and will proceed to Stage Three of the Capability Procedure, which is a formal Capability Hearing, the outcome of which could lead to dismissal, a redeployment or demotion to a suitable alternative role if such a role is available.

4.3.12 The employee has the right to appeal against decision (b) and (c) as outlined in section 4.7.

#### **4.4 Stage Two**

4.4.1 Where there is evidence that some improvement has been made but the required standard has not yet been fully met and the line manager believes that the employee will be able to achieve the required standard within an extended period, the improvement period may be extended for a reasonable period of time, normally between 1 to 3 months; this forms Stage Two of the procedure. The employee will be advised of this in writing, within 5 days of the Stage 1 meeting. The consequences of not reaching the required standard could be their redeployment, demotion or dismissal. Regular and frequent meetings will be scheduled with the line manager and a formal meeting arranged at the end of the period to assess progress.

4.4.2 At the end of the Stage Two review period, the employee will be invited in writing to attend a Stage Two Review Meeting, this will be chaired by the line manager and follow the same structure as outlined in section 4.3.5. There are two possible outcomes:

- a) The employee has achieved the required improvement: This will be recognised and the employee will be encouraged to maintain the improvement and the Capability Procedure will cease. However, should the same performance standards become unacceptable again, within six months of cessation, after discussion with Human Resources, the procedure will recommence at the stage where it was previously halted.
- b) If sufficient improvement has not been made, the employee should be informed of this and the manager's reasons for this decision. The employee will proceed to Stage Three of the Capability Procedure, which is a formal Capability Hearing, the outcome of which could lead to dismissal, redeployment or demotion. The employee has the right to appeal against this decision as outlined in section 4.7. If an appeal is lodged, the Capability Hearing will not be progressed until the appeal is heard.

4.4.3 The line manager will confirm their decision in writing, within 5 days, with a note of the meeting, Performance Improvement Plan and relevant documentation; a copy must be kept on file.

#### **4.5 Stage Three – Capability Hearing**

4.5.1 Human Resources will organise the Stage Three Capability Hearing and will write to the employee with the arrangements. The Capability Hearing will be chaired by an Assistant Director or Executive Director who will not be responsible for the employee's department. The employee has the right to accompanied by a trade union representative or work colleague. A member

of Human Resources Department will accompany the Assistant Director/Executive Director chairing the hearing to provide technical advice. The Assistant Director/Executive Director will determine the outcome of the hearing. The line manager who has been responsible for taking the employee through supervision and Stages One and Two of this procedure will present the management case at the hearing.

- 4.5.2 The purpose of the Capability Hearing is to assess the continued under-performance of the employee in relation to the standard of the role. Therefore, it is important that full details of the performance issues which are the subject of the hearing, a copy of the Capability Procedure and other documentation that will be referred to is made available to the employee at least 14 calendar days in advance of the hearing in the form of a pack which is clearly indexed.
- 4.5.3 HR will collate the pack for distribution to the parties. Any documentation which the employee and manager intends to rely on at the hearing must be forwarded to HR to be included in the pack and enable the pack to be distributed to all parties in advance of the hearing. Documentation not disclosed in advance of the hearing will not be accepted by the Chair.
- 4.5.4 If a Stage 3 Hearing is being arranged following the conclusion of the redeployment process, where suitable alternative posts have not been found or failed (as referred to in section 4.2.10), a HR representative may assist in the presentation of the management case, detailing the redeployment process followed, reasonable adjustments made and feedback from the line manager about performance in role.

#### **4.6 Procedure to be followed at a Stage 3 Capability Hearing**

##### 4.6.1 Procedure:

- The Chair should introduce all parties present. Their roles during the hearing should also be explained.
- The Chair will explain the reason for the hearing and outline the format.
- The Chair will ask the line manager to state the management case. This will outline all the relevant facts including; areas for concern, the actions taken, support given, all the options that have been considered e.g. redeployment or demotion.
- The employee or their representative may address questions to the line manager.
- The Chair and HR representative may ask for any points of clarification at this point to the line manager.
- The Chair will then ask the employee or their representative to outline the employee's case.
- The line manager may then address questions to the employee.
- The Chair and HR Advisor may then ask questions to the employee.
- Both parties should then be given the opportunity to summarise their case – no new information can be submitted at this point unless it only became available after the bundle of information was circulated and it should have been declared to the chair at the beginning of the hearing.
- The Chair will adjourn the meeting whilst they consider the information presented to them.
- Once the decision has been made, the Chair will recall the parties and inform them of the decision.

- If the Chair requires further information, the hearing can be adjourned and reconvened at a future date.

4.6.2 After consideration of the facts presented, the Chair will consider:

- Seriousness of mistakes/underperformance.
- Impact of mistakes/failings on the organisation and team.
- Risks to the organisation.
- Length of service and employment history.
- Employee's response.
- Support given to the employee.
- Any underlying causes.
- Special mitigating factors e.g. disability and reasonable adjustments made.

4.6.3 The Chair will determine whether:

A The employee has reached a satisfactory standard of performance. In this event, the employee will be advised that the Capability Procedure will cease. Should the performance standards become unacceptable again within six months of cessation, after discussion with Human Resources, the procedure may recommence at Stage Three.

or

B The employee has not reached a satisfactory standard of performance, and may determine:

- A redeployment to another job at the same grade,
- A redeployment to a job at a lower grade,
- A further monitoring period is set which will mirror Stage Two of the process (Note – it is expected that a maximum of one further monitoring period will be set).
- Dismissal with notice due to incapability.

However, this list is not exhaustive.

4.6.4 The employee will be notified of the decision in writing within 5 working days of the hearing.

## **4.7 Right of Appeal**

4.7.1 An employee who is dissatisfied with the formal decision at any stage of the Capability Procedure may appeal. The grounds for appeal must be made in writing within 14 calendar days of the decision being communicated to the individual in the capability meeting. Appeals should be addressed to the Head of HR & OD; the grounds for appeal should be outlined clearly so that management can respond to in full.

4.7.2 The manager hearing the appeal will be accompanied by a HR representative. The employee will outline their grounds for appeal. The manager who made the original decision will also be in attendance to outline the grounds for their decision.

- 4.7.3 There will not be any delay in implementing any of the management decisions pending the appeal; however, the decisions may be subsequently amended as a result of the appeal.
- 4.7.4 The format of the appeal will mirror that detailed in section 4.6.
- 4.7.5 The employee will be notified of the outcome at the end of the appeal hearing and this will be confirmed in writing within 14 calendar days of the hearing. On occasions, the hearing may need to be adjourned for further information and reconvened. The decision is final and there is no further right of appeal.

Appendix 1

**Template Performance Improvement Plan**

<i>Please ensure all sections are completed.</i>	
<b>Name of employee:</b>	
<b>Employee's job title:</b>	
<b>Employee's department:</b>	
<b>Employee's manager:</b>	
<b>Stage of the Capability Policy</b>	
<b>Agreed time scales</b>	
<b>Previous review date (if applicable)</b>	
<b>Performance concerns (where it is identified and evidenced that the standards of the role are not being met):</b>	
<b>Existing skills and strengths that the employee could use to improve performance in areas of concern</b>	
<b>Performance concern 1 - improvement required</b>	

<i>Issue to be addressed, evidencing why standard not being in relation to the role</i>	
<i>Solution to assist employee achieve required improvement</i>	
<i>Support to be provided to employee to achieve role standard</i>	
<i>Agreed actions and dates for progress review</i>	
Improvement Achieved / Not Achieved / Progression on track	
<b>Performance concern 2 - improvement required</b>	
<i>Issue to be addressed, evidencing why standard not being in relation to the role</i>	
<i>Solution to assist employee achieve required improvement</i>	
<i>Support to be provided to employee to achieve role standard</i>	
<i>Agreed actions and dates for progress review</i>	
Improvement Achieved / Not Achieved / Progression on track	



<b>Performance concern 3 - improvement required</b>	
<i>Issue to be addressed, evidencing why standard not being in relation to the role</i>	
<i>Solution to assist employee achieve required improvement</i>	
<i>Support to be provided to employee to achieve role standard</i>	
<i>Agreed actions and dates for progress review</i>	
Improvement Achieved / Not Achieved / Progression on track	
<b>Performance concern 4 - improvement required</b>	
<i>Issue to be addressed, evidencing why standard not being in relation to the role</i>	
<i>Solution to assist employee achieve required improvement</i>	
<i>Support to be provided to employee to achieve role standard</i>	
<i>Agreed actions and dates for progress review</i>	
Improvement Achieved / Not	

Achieved / Progression on track	
<b>Identify specific areas where performance has improved since the last form was completed:</b>	
<b>Identify any problems that still remain and the steps being taken to address these:</b>	
<b>Summary of the extent of the employee's overall improvement towards standard required for the role:</b>	
<b>Are any changes required to the performance improvement plan? If yes, give details below:</b>	

<b><i>Employee's comments on the process so far and any points related to those noted in the performance improvement plan:</i></b>	
<b><i>Next meeting date and time:</i></b>	
<b><i>Employee's signature:</i></b>	
<b><i>Manager's signature:</i></b>	
<b><i>Name of HR representative:</i></b>	
<b><i>Name of TUS Representative or Work Colleague:</i></b>	
<b><i>Date:</i></b>	

## Appendix 2

### **Letter inviting to a formal meeting Capability Procedure – Stage (insert) Job Role & hours worked**

Following my concerns regarding your performance as you there are areas where you are not meeting the standard required for the role, a performance improvement programme was put in place designed to help you reach the required standard.

It was explained to you that your performance would be kept under review and, should the required improvement not be achieved and maintained, a formal procedure would be invoked under the organisation's capability procedure (attached).

I am writing to you because I believe that your performance remains unsatisfactory. The reasons for this are [insert reasons].

You are therefore invited to attend a formal Capability Hearing Stage (insert) . The meeting will take place at [time] on [date] at [location] and will be conducted by [identify manager who will chair the hearing]. An HR representative will be in attendance.

The purpose of the hearing is to review your performance. At the hearing, you will have an opportunity to respond to any concerns regarding your performance and to make representations.

Depending on the facts established at the hearing, the outcome could be [state potential action, e.g. further performance improvement measures], but a decision on this will not be made until the hearing has been concluded.

You have the right to be accompanied at the hearing by a work colleague or trade union official. Your companion will, if you so wish, be able to make representations on your behalf; sum up your case; and respond on your behalf to any view expressed at the hearing. They will also be allowed to confer with you during the hearing. However, they will not be able to answer questions on your behalf.

Should you have any questions or concerns about the process, please do not hesitate to contact me.

Yours sincerely

### Appendix 3

#### Letter advising the outcome - redeployment

I am writing to confirm the outcome of the capability hearing Stage (insert) conducted on [date].

The hearing concluded that, despite extensive efforts to give you support and an opportunity to improve, your performance has still not reached the standard required for the role. Specifically, you [describe briefly the respects in which the employee's performance remains below an acceptable level].

I listened carefully to what you had to say in the meeting. In particular, [describe the main points of the employee's submissions made at the hearing]. However, my conclusion was that you had failed to reach an acceptable level of performance in your role despite extensive efforts to provide you with support and an opportunity to improve.

The process has reached the stage where the organisation is prepared to dismiss you rather than continue to employ you in your current role.

[However, to avoid that outcome, the organisation is prepared to redeploy you in accordance with your contract of employment.

Your new role will be [brief overview of new role] and will be paid at [give details of remuneration]. The change will take effect on [date] and the new pay arrangements will take effect from that time. Full details of the new role [are attached/set out details of how this information will be communicated].

The organisation has chosen to take this option as an alternative to dismissing you for poor performance as it hopes that the new role will be more suited to your skills and ability. Should you have any questions about the new role, please do not hesitate to contact me.]

[OR

However, to avoid dismissal, the organisation is prepared to offer you redeployment to the post of [describe the new post being offered]. Remuneration for this post will be [set out the details of what the employee will be paid in the new role] the employment stability policy does not apply. Full details of the new post and the terms on which it is being offered to you [are attached/set out details of how this information will be communicated].

This redeployment will take effect only if you agree to it; you are free to reject this offer. You should be aware that the offer is being made as an alternative to dismissal as the organisation believes that it is no longer possible to employ you in your current role because of your poor performance, which means that you are not achieving the standards required of the role. It is, however, hoped that this offer will allow you to remain in employment in a role that is better suited to you. If you decide to reject this offer of alternative employment, the result will be your dismissal.

Therefore, if you wish to accept the offer, please sign the accompanying notice of variation of contract and return it to me by [date]. Alternatively, should you wish to reject the offer, I would be grateful if you could inform me within the next seven days of receipt of this letter.]

If you have any questions or would like to discuss the details of this offer, please do not hesitate to contact me.

Yours sincerely

#### Appendix 4 – Outcome letter advising required improvement achieved

Following the capability hearing held on [date], I am writing to confirm the outcome.

The hearing was convened because of concerns relating to your performance that resulted in you being placed on a performance improvement programme that ran from [give dates] and involved [summarise main forms of support given to the employee]. Specifically, we had concerns that [set out a brief description of the performance issues identified].

At the hearing, I listened carefully to what you had to say. In particular, you said [briefly summarise the key points made by the employee].

The panel has decided that your performance has improved to a sufficient degree and you have taken on board the feedback that you were given on your performance. Specifically, you have now [insert details of steps employee has taken to improve their performance] and are now working to the required standard.

I hope that your improved performance will continue. I would like to remind you that you should continue to achieve [insert details of what the employee needs to do to maintain their performance at an acceptable level].

While there is no need for any further action by the organisation at this time, if your performance does not continue at an acceptable level, I may need to take further action under the organisation's performance improvement procedure. I hope this will not be necessary.

In the meantime, please do not hesitate to let me know if you have any questions or concerns.

## Appendix 5

### Invite to a hearing letter –

#### Capability Hearing – Stage 3 Meeting Invite Job role & hours worked

Following my concerns regarding your performance, a performance improvement programme was put in place designed to help you reach the required standard.

Manager xxxxx has been working with you to provide the support and guidance outlined in the Capability Policy Stage 1 & 2 and the decision was made to escalate to Stage 3 due to continued performance issues.

It was previously explained to you that your performance would be kept under review and, should the required improvement not be achieved and maintained, an escalation through the stages of the Capability Policy would occur. I am writing to you because I believe that your performance remains unsatisfactory as you have not achieved the standards expected for the role. The reasons for this are [insert reasons].

You are therefore invited to attend a formal Capability Hearing under Stage 3 of the capability procedure (attached). The meeting will take place at [time] on [date] at [location] and will be conducted by [identify manager who will chair the hearing].

The purpose of the hearing is to review your performance in line with the pack prepared for this meeting which should evidence all of the actions taken in relation to the Capability Policy with you. At the hearing, you will have an opportunity to respond to any concerns and evidence presented in relation to your poor performance and to make representations.

Depending on the facts established at the hearing, the outcome could be further performance improvement measures, cessation of the policy, redeployment or dismissal. A decision will be made at the end of this meeting. Adjournment of the meeting can be permitted whilst deliberations take place. You have the right to be accompanied at the hearing by a fellow worker or trade union official. Your companion will, if you so wish, be able to make representations on your behalf; sum up your case; and respond on your behalf to any view expressed at the hearing. They will also be allowed to confer with you during the hearing. However, they will not be able to answer questions on your behalf. An HR representative will also be in attendance.

Should you have any questions or concerns about the process, please do not hesitate to contact me.





What Policy/ Procedure/ Strategy/Project/Service is being assessed?	Capability	
Date Conducted	October 2022	
Name of Lead Officer and Service Area	Jackie Noble HR	
Commissioning Team (if applicable)	N/A	
Director Responsible for project/service area	Anica Goodwin	
Who are the main stakeholders	Employees	
Describe what consultation has been undertaken. Who was involved and what was the outcome	CMT TULG Members	
Outline the wider research that has taken place (E.G. commissioners, partners, other providers etc)		
What are you assessing? Indicate with an 'x' which applies	A decision to review or change a service	<input type="checkbox"/>
	A Strategy/Policy/Procedure	<input checked="" type="checkbox"/>
	A function, service or project	<input type="checkbox"/>
What kind of assessment is it? Indicate with an 'x' which applies	New	<input checked="" type="checkbox"/>
	Existing	<input type="checkbox"/>
	Being reviewed	<input type="checkbox"/>
	Being reviewed as a result of budget constraints / End of Contract	<input type="checkbox"/>

**Part 2 – Summary of Assessment**

Give a summary of your proposal and set out the aims/ objectives/ purposes/ and outcomes of the area you are impact assessing.

To provide a framework for dealing with capability issues.

Who will be affected and how?

All employees, with the exception of Chief Executive and Chief Officers and those on

a Probationary Period. - This policy provides guidance for support.
Are there any other functions, policies or services linked to this impact assessment? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
If you answered 'Yes', please indicate what they are? All employees Yes, Probationary Periods, Disciplinary and Attendance Management are referenced.

**Part 3 – Impact on the Community**  
Thinking about each of the Areas below, does or could the Policy function, or service have a direct impact on them?

Impact Area	Yes	No	Reason (provide brief explanation )
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of age
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of disability and explicitly references reasonable adjustments
Gender Reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of gender reassignment
Marriage & Civil Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of marital status
Pregnancy & Maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of pregnancy and maternity
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of race
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of religion or belief
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of sexual orientation
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of sex
Gypsy/Travelling Community	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment
Those with Caring/Dependent responsibilities	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of those with caring responsibilities
Those having an offending past	<input type="checkbox"/>	<input checked="" type="checkbox"/>	The policy applies consistent and fair treatment irrespective of sex
Children	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Vulnerable Adults	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Families	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Those who are homeless	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor

Those on low income	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Those with Drug or Alcohol problems	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Those with Mental Health issues	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Those with Physical Health issues	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Not a factor
Other (Please Detail)	<input type="checkbox"/>	<input type="checkbox"/>	

**Part 4 – Risk Assessment**

**From evidence given from previous question, please detail what measures or changes will be put in place to mitigate adverse implications**

Impact Area	Details of the Impact	Action to reduce risk

**Part 5 - Action Plan and Review**

Detail in the plan below, actions that you have identified in your CIA, which will eliminate discrimination, advance equality of opportunity and/or foster good relations.

**If you are unable to eliminate or reduce negative impact on any of the impact areas, you should explain why**

Impact (positive or negative) identified	Action	Person(s) responsible	Target date	Required outcome

Date of Review (If applicable) .....