

# Capability Procedure

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## Scope

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1. This procedure must only be used for managing formal capability issues. Managers should ensure that informal steps relating to performance management, as outlined in the Supervision and Performance Management of Employees guide, are undertaken and documented in the first instance.
2. This procedure applies to all City of London Corporation employees (excluding teaching staff in the three City schools, Police Officers and Chief Officers for whom separate procedures apply) unless otherwise stated who have completed their

probationary period. It should be used when routine performance management activities and support have failed to result in performance at the required standard.

3. The procedure does not apply to agency workers, casual staff, consultants or other workers providing services to the City Corporation.
4. The Director of Human Resources will be responsible for the interpretation, advice and management of these procedures on behalf of the City Corporation.

## **Principles**

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5. The procedure is designed to:
  - help managers to set and reinforce expectations / illustrate specific areas of underperformance / set standards of improvement;
  - assist managers and employees to agree a course of action and specific steps to improve performance;
  - allows employees the opportunity to improve their performance through agreed action plans with clear objectives;
  - provide reasonable support, training and assistance to help an employee overcome under performance;
  - ensure performance is monitored and progress recorded and communicated to the employee;
  - ensure that employees understand that if they fail to improve to the standard required this could ultimately lead to dismissal;
  - ensure that employees are treated fairly and equitably.
6. The stages in this procedure are:
  - Formal Stage 1
  - Formal Stage 2
  - Formal Stage 3 (only applicable in certain situations)

## **Introduction**

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7. The City Corporation is committed to providing reasonable support to employees to meet the required standards of performance as outlined in the job description, person specification and any supporting operational and / or technical procedures which may apply.
8. The Managing People Policy provides clarity about how the behaviour, actions and performance of employees that fall short of that expected by the City Corporation will be managed.

9. It is recognised that most employees provide good, and on many occasions excellent performance. Sometimes, however, employees may not perform to the required standard expected by the City Corporation as a result of a lack of capability or competence.
10. This procedure aims to support employees in achieving the expected standard of performance. We aim to work collaboratively and constructively with employees to help them to reach the standard required in a non-adversarial way.
11. Managing poor performance fairly, objectively, effectively and promptly is critical to maintaining a professional business. Failure to address poor performance results in inefficiency and may lower engagement throughout the rest of the workforce.
12. Managers are expected to provide employees with appropriate supervision, guidance and the necessary tools and equipment to undertake their duties. However where levels of performance fall short of that expected by the City Corporation, despite informal efforts to help the employee improve, managers will take appropriate steps as set out in this procedure.

## **When Does This Procedure Apply**

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13. If poor performance is due to lack of skill, ability, aptitude or knowledge in relation to their job, i.e. they cannot do something; this should be dealt with under this procedure (see Appendix 1: Capability Procedure Flowchart).
14. Before the formal procedure is used, the manager should have set standards to be achieved and objectives to be met for improvement within a specified timeframe (refer to the Managing People Policy). **This procedure should only be used when informal standard setting has not led to a sustained improvement in performance by the employee.**
15. If poor performance is due to carelessness, poor attitude, combined with a failure to perform tasks to meet the expectations of the role, i.e. they will not do something; this should be dealt with under the disciplinary procedure.
16. Where an employee is believed to have committed acts (or a single act) of serious negligence so as to create a danger to themselves or others, or where they have made serious errors to the detriment of the City Corporation, this may be dealt with as gross incapability or, in the case of deliberate acts, as gross misconduct under the disciplinary procedure. This can occur at any stage in the process where appropriate. (Note: if an employee is within their probationary period action should be taken under the probation policy, not the disciplinary procedure).
17. Action taken under this procedure will depend on:
  - the reason for poor performance;

- the seriousness of the concern(s);
  - measures taken to address the issue(s) informally;
  - the skills, qualification and experience required for the job;
  - the seniority of the employee;
  - the level of improvement that has been secured and maintained; and
  - known mitigating factors.
18. Management levels authorised to take action under this procedure are set out in the Managing People Policy.
  19. The responsibilities of managers, employees and human resources are as outlined in the Managing People Policy.
  20. At all formal meetings employees must appear in person, unless the manager chairing the meeting agrees otherwise. The meeting is intended to be open, collaborative and non-adversarial as this is not a disciplinary matter and the intention is for managers to set standards and secure improvement in performance by the employee.
  21. Where ill health or suspected ill health is contributing to an employee's capability to carry out the full range of duties of the post (but has no significant impact on attendance levels) this policy will apply.
  22. Where an employee's sickness levels have resulted in the employee reaching a trigger level or the employee is informed that a pattern or type of sickness absence is causing concern the Sickness Absence Policy will apply in the normal way. However, it may be necessary to manage the employee concurrently under the capability procedure if the employee is not undertaking the full range of duties required by their role when they are at work. Where a phased return is required following a long sickness absence, expectations will be clearly outlined to allow the employee to be managed under both processes.
  23. Alongside the principles set out in this document, managers should consider any Occupational Health (OH) recommended advice and adjustments to the duties in line with the employee's condition and the Equality Act 2010.
  24. Where the employee's ill health arises from a disability, as defined by the Equality Act 2010, the manager has a responsibility to consider making reasonable adjustments (on either a temporary or permanent basis) to the working environment, working practices and potentially to the terms and conditions of service within the contract of employment. In all such cases, the manager should discuss this with the HR contact before taking any action.
  25. Where alcohol or drug misuse or other dependency is suspected and performance is affected, managers should address this with employee and provide them with an opportunity to declare the problem and an early referral to OH should occur.

Managers, in consultation with OH advice, will agree the options to improve the employee's performance and continue to monitor.

26. In all cases, medical advice will be sought from the Occupational Health Service. The manager will discuss this advice with the employee.

## **Right to Representation at Formal Meetings**

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27. Employees have the right to be accompanied at formal capability meetings by a trade union representative or a work colleague. The employee and their companion must make every effort to attend all meetings arranged to discuss their performance. If the employee's companion cannot attend on the date arranged the employee may offer a reasonable alternative date and time so long as it is no more than five working days after the original date.
28. Where an employee or their companion continues to be unavailable to attend a meeting or fails to attend, the employee may be advised that the meeting will be held in their absence and concluded on the information available.

## **Performance Improvement Plan**

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29. A Performance Improvement Plan (PIP) is a written plan which details a series of measures designed to help improve the employee's performance. Each measure will ideally be agreed with the employee, although the manager (or City Corporation) reserves the right to insist on any aspect of the PIP in the absence of agreement.
30. The PIP should:
- Clearly and objectively set out where the employee is failing;
  - Set out the improvement expected of the employee using measurable objectives;
  - State whether any support or training will be provided;
  - Provide the timescales and frequency of reviews;
  - Consider OH advice in ill health cases as appropriate.
31. An example of a PIP can be found at appendix 2.

## **Formal Procedure**

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32. Before commencing the formal procedure line managers should speak with their HR representative to ensure that appropriate action is taken.
33. Line managers will write to employees giving them at least 5 working days' notice of formal capability meetings. The letter should contain sufficient information about the

poor performance and its possible consequences, including any previous performance discussion notes and any documents to be referred to in the meeting (for example job description, person specification, 1:1 notes, appraisals etc.).

34. The purpose of the meeting is to be solution focussed and to be collaborative it is not the intention that there would be witnesses called to meetings to do with employee's performance. In exceptional circumstances the Director of HR will determine if it is appropriate for witnesses to be called.

35. A representative from HR may also be present at the meeting.

## **Format of Formal Meetings**

36. At the formal meetings the line manager will:

- Explain the purpose of the meeting;
- Allow for adjournments to take place should they be required;
- Confirm that they and the employee have the same documents;
- Clearly set out the specific areas that are falling below the expected performance standard, providing examples;
- Discuss any efforts already undertaken to improve the level of performance (by both the employee and the manager);
- Discuss the type and level of support that has already been put in place;
- Discuss any reasonable adjustments under the Equality Act 2010 which have already been implemented or considered;
- Discuss the impact on the service and team;
- Discuss options on possible remedies, together with any appropriate training / retraining support;
- Set a Performance Improvement Plan (PIP) and the timescale during which improvement is required (as appropriate);
- Explain the consequences of a failure to achieve any further action plan put in place.

37. The employee will:

- Be given the opportunity to comment on the accuracy of the records and history, and raise any new issues or factors which may have impacted on their performance;
- Provide an explanation about attempts to improve performance under the informal process or earlier formal stages;
- Discuss any possible remedies, including what reasonable support they may require (for example coaching, training courses etc.) in order to achieve the required standard of performance;

- Provide examples of reasonable adjustments that may allow them to return to optimum performance.
38. At the end of the meeting the manager will adjourn to consider the outcome and will notify the employee of their decision.
39. The potential outcomes at the first formal stage are:
- no further formal action at this stage (e.g. previously undisclosed mitigating circumstance);
  - demotion (where a suitable alternative post is available);
  - a written warning or a final written warning will be issued including a PIP.
40. When making the decision the manager will consider:
- the direction of travel - has there been an improvement in performance;
  - the reason for the drop in performance;
  - the employee's performance in comparison to expectations of employees in similar roles (if appropriate);
  - any mitigating circumstances;
  - whether there been a change to the duties of the role / or the focus of what is required;
  - any other reasonable forms of assistance or adjustments which could be provided to support performance improvement.

They should also consider the information included in the appropriate performance management tools which may be included as part of the papers:

- Job description;
  - Person specification;
  - Learning and development record;
  - City of London Values – Lead Empower Trust;
  - 1:1 notes and action plans;
  - Appraisal documents;
  - Feedback notes;
  - Return to work interviews;
  - Time keeping records.
41. After the meeting the line manager will write to the employee within 5 working days of the meeting, including a note of the discussion and performance issues (these will not be verbatim notes) and confirmation of the decision taken. If a warning is to be issued the letter will also include:
- The performance standard expected by the employee and the improvement required from the employee;
  - The help and support available to the employee;

- A Performance Improvement Plan (PIP);
  - The length of the review period;
  - The date of the next meeting (where possible);
  - Explanation of the consequence if performance does not improve to the required level.
42. Managers should consider any employee requests for amendments to the formal record of the meeting. If the manager agrees, the record should be amended clearly showing what the amendments are. If the manager does not agree, the employee's request should be attached to the written record as part of the case history, with a note explaining why they do not agree. The employee must raise any requests for amendment as soon as they have received the written record of the discussion.
43. Where no further formal action is required, the manager should set out the reasons for this. For example to accommodate a temporary adjustment or a learning and development requirement, an additional meeting may be required. If so, the date of that meeting should be included.
44. The purpose of the first formal meeting is to jointly agree, if possible, an action plan to assist the employee in achieving the expected standard of performance. Managers should ensure that the employee has a clear understanding of the expected standards and what they need to do to achieve these. Employees will be asked to sign a copy of the letter and action plan confirming their agreement to the targets and timescales set and the notes of the meeting. Ultimately it is the decision of management to determine the appropriate standards required for the role.

## **Outcome of Formal Stages**

45. Written warnings and final warnings will include the implementation of a PIP, designed to bring the employee's performance up to an acceptable level.
46. Review periods should normally be for 1 month, they should not be for any less. In exceptional circumstances the review period may be extended up to a maximum of 3 months, to take account of reasonable adjustments as a result of a disability, for training needs or to allow employees who work part time reasonable time to demonstrate performance improvement.
47. At the review meeting(s) progress against the PIP will be discussed by the employee and manager. At the final review meeting at the end of the period of improvement, the manager will advise the employee whether or not their work performance has improved sufficiently. If it has, this will be confirmed in writing, confirming that this level of performance is expected to be maintained, and no further action will be taken under this procedure.



48. If the employee's work performance has not reached the standard expected, the manager will explain the shortcomings and provide them with an opportunity to respond. If there has been some improvement, then this should be acknowledged but should be set within the context of the overall issues. If the manager considers that there is not a justifiable reason for not reaching the required standard during the review period, and/or that the shortcomings are likely to continue, then progression to formal stage 2 will occur.
49. Where there has been some sustained level of improvement a written warning and a final written warning will normally be given before dismissal is considered. In the case of serious incapability or where the direction of travel has not improved, the employee may be given a final written warning even if it is a first incidence. In the case of gross incapability, employees may be dismissed with or without notice.
50. If incapability / underperformance is proven, it will automatically result in a rating of "improvement required" at the Performance Development Framework & Appraisal and an increment/bonus as appropriate will not be applicable in that year.
51. If an employee is absent from work for a prolonged period of time, for example due to long term sickness absence, the review period should be extended to allow the employee sufficient time to demonstrate a sustained performance improvement.

## **Meeting to Consider Dismissal**

52. A formal stage 2 meeting to consider dismissal will be held if and employee's performance has failed to improve to the required standard.
53. A manager at the appropriate level will be allocated to hear the case in accordance with the Managing People Policy, and they will formally write to the employee inviting them to a meeting to discuss their performance. The manager chairing the meeting will be advised by a HR representative. The line manager will also be in attendance. The employee may be accompanied to this meeting by their trade union representative or work colleague.
54. This meeting will cover:
  - Confirmation / exploration of the issues / unsatisfactory performance under the formal stage(s);
  - A review of set targets and timescales for improvement under formal stage(s);
  - Impact of the shortcomings outlined;
  - A review of the remedies implemented (e.g. any appropriate training / retraining support);
  - Outline the potential outcomes of the meeting (for example dismissal, demotion etc.).

55. The employee will be given an opportunity to respond to the management case of underperformance and to put forward any explanation they may have for the matters identified by the manager.
56. The outcome of the meeting will be confirmed in writing within 5 working days of the meeting and may be:
  - A decision to consider an alternative to dismissal i.e. demotion, transfer, or redeployment;
  - Dismissal on grounds of capability with notice (without notice on grounds of gross incapability).
57. The letter should include the reason for the decision; the date on which the decision becomes effective; the appropriate period of notice (if applicable); and the employee's right of appeal.
58. Demotion should only be considered where they are sure that the employee would be successful at the lower grade and where there is a post available.
59. If the outcome of this meeting is dismissal then the employee has the right of appeal.

## **Appeals**

60. Employees have the right to appeal against a decision to dismiss. Appeals must be made in writing to the Director of HR within 5 working days of receipt of the letter advising of the original decision. Appeals must specify the grounds of appeal and may relate to the application of the procedure and/or the decision. In exceptional circumstances, new information may be submitted, but an explanation must be included as to why the information was not provided at the time the original decision was made and how the information is material.
61. In the case of appeals against dismissal for employees at Grade I and J the appeal will be heard by the Appeal Sub Committee. For employees up to grade H they may opt to have an independent Level One officer or a hearing before the Appeal Committee in accordance with the Managing People Policy. All Appeal Hearings will be supported by a Corporate Human Resources representative.
62. The Dismissing Officer will be asked to prepare a written response to the appeal within 10 working days of receipt of the appeal and this will be shared with the employee. The employee may request that their appeal is a review of the paperwork only, without the attendance of either party at a hearing. In these circumstances if the Director is agreeable to such an approach the Appeal Officer / Appeal Committee will consider the appeal and their decision will be final and confirmed in writing. In all other cases an Appeal Hearing as outlined below will be arranged.

63. Appeals will usually be heard within 15 working days of the appeal being received and a review of the decision and consideration of the specific grounds of appeal. It is not usual to have new information entered at this stage. Any request for new information must be made at the time of making the appeal to the Director of Human Resources for consideration explaining why the new information was not provided at the time the original decision was made and how the information is material. The Director of Human Resource's decision will be final and the employee will need to provide and agreed additional documentation no more than 5 working days after this decision.
64. Employees may not additionally raise a grievance about the same issue under other procedures.

## Links / Other resources

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65. The City of London Corporation has an [Employee Assistance Programme](#) which is available to all employees, their partners and family members. This can be accessed on the following free phone number 0800 243 458. It is a confidential service provided by an independent third party and can provide support on a wide range of personal and work issues.
66. The following policies and guidance documents provide further information and support:
- [Code of Conduct](#)
  - [Disciplinary Procedure](#)
  - [Alcohol and Drug Misuse Policy](#)
  - [Employee Assistance Programme](#)
  - [Managing People Policy](#)
  - Supervision and Performance Management of Employees - Guide
  - Probation Policy

## Appendices

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- Appendix 1: Capability Procedure Flowchart
- Appendix 2: Performance Improvement Plan