

Warwickshire County Council

Capability Procedure

1. Introduction

This procedure should be followed when an employee's performance has been identified as falling below an acceptable level (see A.1 Flowchart). Its purpose is to provide a framework for resolving the issue, ideally through the improvement of the employee's performance. If this doesn't happen, the procedure specifies the circumstances in which the employee may be redeployed to more suitable work or dismissed on the ground of incapability. This is completely separate from matters of misconduct which are managed through the disciplinary procedure.

2. Informal Stage

2.1 Before the formal stages of this procedure are engaged, the employee should receive face to face feedback via good [1:1 conversations](#) with his/her manager setting out the concerns about the employee's performance and how his/her performance should be improved.

2.2 There should be a specified improvement period which is not usually less than 4 weeks and no more than 12 weeks. The manager will identify the standards of improvement to be achieved during this period e.g. [our behaviours](#) they are seeking to achieve. The manager will put in place appropriate monitoring arrangements during the improvement period to review progress. This should normally include monitoring of progress and may include (according to the particular circumstances):

- Supervision sessions
- [Additional training](#)
- Feedback
- Support and guidance
- Work shadowing
- [Coaching and mentoring](#)

2.3 A written record will be maintained of steps taken and any improvement made during the informal improvement stage. Appendix 2 outlines a **Performance Improvement Plan** template that can be used at both the informal and formal stages.

The Performance Improvement Plan should be attainable, objective and realistic and should take into account the specific requirements of the Job Description of the individual post.

2.4. If the employee has made sufficient improvement at the end of the informal improvement period he/she will be advised of the fact and this procedure shall cease.

2.5 If at the end of the informal improvement period some progress has been made and there are prospects of further improvement, the manager may agree to extend the improvement period to allow such progress to continue. The length of such an extension will be for the manager to determine based on the particular circumstances. The employee will be advised of this.

2.6 If insufficient progress has been made the formal procedure (as at Paragraph 3) will be started.

3. Formal Stage

The formal procedure is designed to be used when efforts during the informal stage do not lead to the employee improving his/her performance to an acceptable level. In exceptional circumstances where performance has been particularly poor the manager may commence this procedure directly at the formal stage without needing to undertake the informal improvement stage.

4. Stage 1

4.1 The manager will write ([link to letters](#)) to the employee explaining that:

(a) there has been insufficient progress during the informal stage and the formal procedure will be initiated; or

(b) that due to the seriousness of the poor performance the process has been commenced immediately at the formal procedure.

The manager will give the employee 7 calendar days' notice of a meeting at Stage 1.

4.2 The employee will be advised of their right to be accompanied by a recognised trade union representative or a fellow employee (this right to be accompanied remains for all of the formal stages of this procedure). It is the employee's responsibility to arrange who they wish to accompany them and they should advise the manager in advance of the meeting who this will be.

4.3 The meeting will usually be conducted by the employee's manager. The focus of the meeting will be on:

- Clarifying the shortfall in performance;
- Exploring the potential reasons for this;
- Identifying what support can be offered to the employee to help them improve;
- Obtaining the employee's suggestions as to how they can improve performance;
- Setting improvement targets for a specified improvement period (normally not less than 4 weeks and not more than 12 weeks)
- Setting a date for a Stage 1 review meeting (after the end of the improvement period).

4.4 Following the meeting, the manager will write ([link to letters](#)) to the employee setting out the expected standards of improvement, clarifying what support and monitoring will be provided during the Stage 1 improvement period and confirming the date of the Stage 1 review meeting.

5. Stage 1 review meeting

5.1 On the agreed date (or sooner if the manager considers performance is a significant concern during the improvement period) the manager will undertake a Stage 1 review meeting with the employee to review progress during the Stage 1 improvement period.

5.2 If sufficient progress has been made, the employee will be advised of this and the formal procedure shall cease. This will be confirmed in writing and the letter ([link to letters](#)) will be held on the employee's personal file.

5.3 If there has been insufficient progress, a written record of this should be provided to the employee and a copy held on their personal file for a period of twelve months from the date of the Stage 1 review meeting. In addition, the employee will be advised that they will be given a further period of improvement (normally not less than 4 weeks and not more than 12 weeks) as part of Stage 2. The option of the employee being redeployed to another role can be explored if relevant at the Stage 1 review meeting. A date (following the improvement period) will be set when a Stage 2 review meeting shall be held. The manager should seek advice from the relevant HR Advisor before proceeding to Stage 2. The above should be confirmed in a letter to the employee setting out the expected standards of improvement, clarifying what support and monitoring will be provided during the Stage 2 improvement period and confirming the date of the Stage 2 review meeting. Where a Stage 2 review meeting is scheduled the employee will be advised that the outcome of such a meeting might result in their dismissal.

6. Stage 2 Review

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6.1 The Stage 2 review meeting can be brought forward if during the improvement period the manager considers performance is a significant concern. In this instance it is recommended that advice is sought from the relevant HR Advisor.

6.2 The Stage 2 review meeting will be chaired by the manager's manager or another nominated senior manager.

6.3 The line manager will present evidence of the steps taken (both informal and formal) to address shortfalls in the employee's performance and clarify the level of improvement achieved. The manager may be questioned by the employee (or their representative) and the senior manager.

6.4 The employee may respond setting out any concerns they have about the assessment of their performance or the support offered. The employee may be questioned by the line manager and the senior manager.

6.5 A hearing may be adjourned if the manager chairing the meeting decides that they need to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information before the hearing is reconvened;

6.6 If appropriate, the manager chairing the meeting may explore the prospects of the employee being redeployed to some other work.

6.7 Having heard the evidence, the senior manager will decide:

- That there has been sufficient progress and that the procedure shall cease or;
- That there is insufficient progress but that there might be potential to explore the possibility of the employee being redeployed into another position in the organisation - see paragraph 8 ('Redeployment') below or;
- That there has been insufficient progress, but it is reasonable to set a further review period (normally not less than 4 weeks and not more than 12 weeks), due to some improvements being made, and to reconvene the stage 2 hearing at the end of that period or;
- That there is insufficient progress and that the employee should be given notice of dismissal for reasons of incapability.

6.8 The decision of the manager chairing the meeting will be confirmed in writing ([link to letters](#)) to the employee. In cases of dismissal it will usually be on contractual notice, unless performance has been so negligent it may amount to gross negligence. Instances of gross negligence/gross neglect of duty shall usually be dealt with under the Council's disciplinary policy. Where a decision is taken to halt the procedure because improvement is sufficient the letter confirming this decision will be held on the employee's personal file for a period of 12 months. Employees will not usually be dismissed for performance reasons without previous warnings, except in cases of gross negligence, or cases involving an employee who has not yet completed their probationary period.

7. Appeal

7.1. Where an employee wishes to appeal against formal action received at Stage 1 or 2 they should write to the manager hearing the meeting, clearly outlining the grounds of their appeal within 14 calendar days of receipt of the decision letter. Hearing an appeal will not halt any improvement periods currently in place unless there are exceptional circumstances to warrant this.

7.2. The employee can appeal on the following grounds:

- Insufficient weight given to the employee's evidence of performance
- The decision is unreasonable
- Fresh evidence (which was not available at the original meeting) has come to light
- The decision is perverse or wholly disproportionate
- The correct procedure has not been followed and this has put the employee at a demonstrable disadvantage.

7.3. The appeal will be heard by an appropriate senior manager and will follow the process below:

- The employee (or their representative) will state the grounds of their appeal.
- The manager may question the employee.
- The senior manager may question the employee.
- The manager will respond explaining their decision
- The employee may question the manager
- The senior manager may question the manager
- The employee may make a closing statement
- The manager may make a closing statement
- The meeting will adjourn for the senior manager to make their decision

7.4 The senior manager hearing the appeal may decide:

- The appeal is upheld in full, the original decision is withdrawn and the employee is reinstated. If the appeal was upheld against 5.3, the outcome would be to remove any formal performance decision from the employees file (e.g. the warning);
- The appeal is upheld in part, a lesser outcome imposed or other action taken, and the employee is reinstated;
- The appeal is dismissed and the original decision stands;

7.5 A hearing may be adjourned if the manager chairing the meeting decides that they need to gather any further information or give consideration to matters discussed at the hearing. The employee will be given a reasonable opportunity to consider any new information before the hearing is reconvened.

7.6 The decision will be confirmed in writing to the employee.

8. Redeployment

Whilst an employee might be judged incapable of reaching the standards of their current role it may be possible that they are capable of undertaking another role within the organisation. Consideration of redeployment to such alternative employment should be considered at the earliest opportunity and before any final decision to dismiss is taken. Consideration of redeployment is dependent upon the types of vacancies available at that time and the employee's individual skills and experience so cannot be guaranteed. Where redeployment is offered it may be at the same or a lower grade of the employee's current position and there will be no salary protection.

9. Equality considerations

In addressing performance that does not reach an acceptable standard, managers should be mindful of any impact an employee's disability might have on their performance. This means discussing with the employee the impact of their disability on their performance, exploring what adjustments might be made and whether such adjustments are reasonable.

In addressing performance that does not reach an acceptable standard, managers should be sensitive to an employee's protected characteristics and whether these may have any bearing on their performance. The protected characteristics are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion or belief;
- sex
- sexual orientation;

In such circumstances managers should seek advice from the relevant HR Advisor.

10. Employee's request for an adjournment of any meetings under this procedure

If the employee's chosen trade union representative or work colleague is unable to attend the scheduled meeting, the employee may propose an alternative date provided it is reasonable and no more than 7 calendar days after the original date and another meeting will be arranged. If the employee fails to attend the re-arranged meeting, a decision may be taken in their absence. In addition if a trade unions representative or work colleague is unable to attend the rescheduled meeting (i.e. more than 7 calendar days after the original date) then the manager may require the employee to choose someone else.

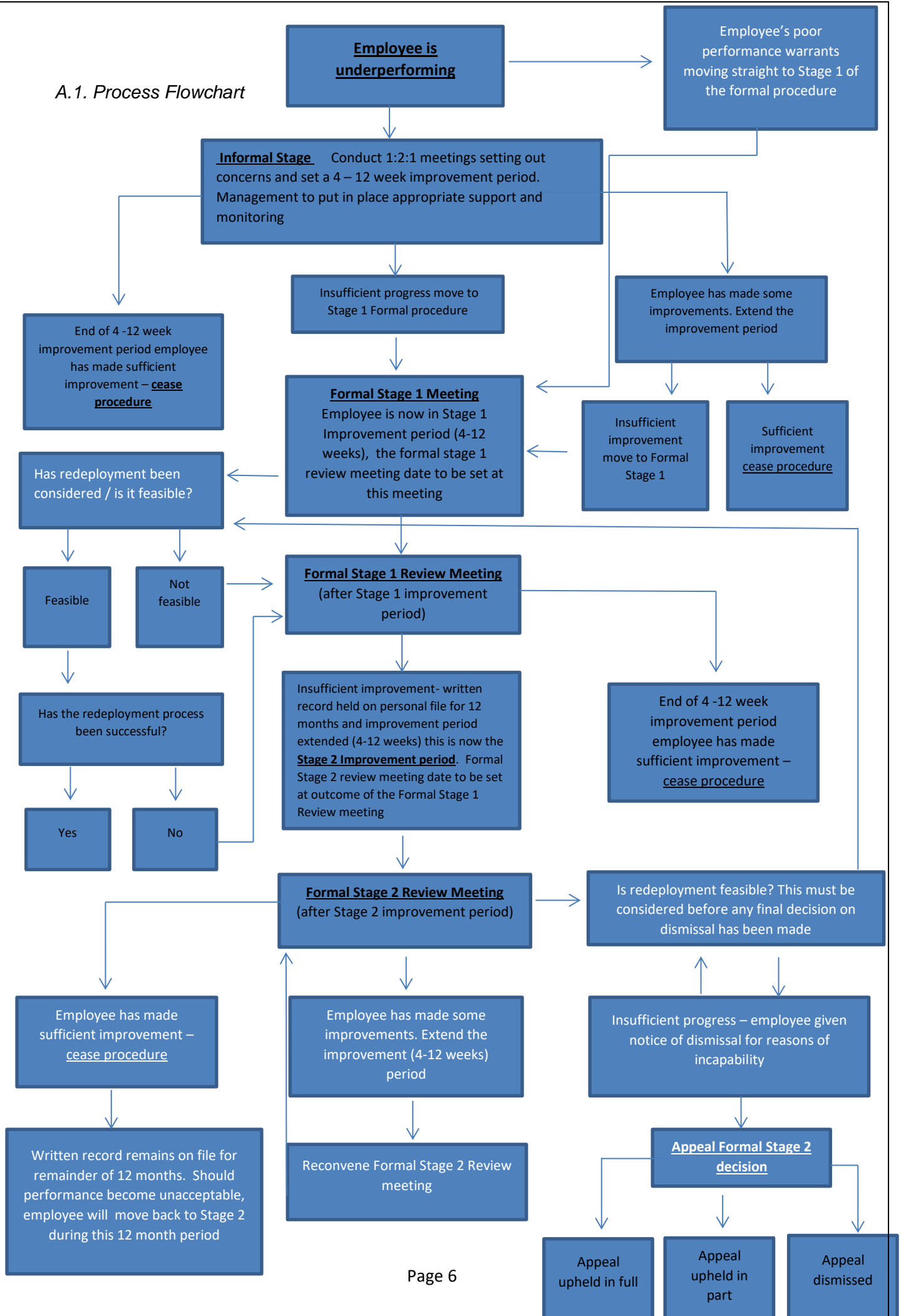
11. Record Keeping

11.1 A capability record must be created in YHR within the case management module for all formal stages of the procedure together with the outcome. An informal stage should also be created where the employee is alerted to the fact that formal action will be considered as the next stage.

11.2 Documents relating to any capability case should be uploaded to the Performance Section of the employee's HR-ER file using the following convention to link all the documents to a single case record - "Capability " followed by the "valid from" date followed by the title of the document, eg (Capability 02/04/19 Informal file note). Records are confidential and must be kept in accordance with the Data Protection Act.

Please note as a matter of policy in all formal meetings/hearings that the County Council requires that all attendees turn off any electronic devices to avoid unnecessary interruptions during the meeting and does not allow recording of meetings.

A.1. Process Flowchart



A.2. Performance Improvement Plan

Name:	
Line Manager/ Supervisor:	

Stage/ Date	Performance Objective to be met What are the specific issues to be addressed	Improvement Required Success criterion/ what progress is expected	How will this be met/ Any support required? Method of achieving performance/ when/who will be responsible	Timescale/ Target Date for Completion	Review Outcome Comments/ Review Notes/ any additional action

Jointly Agreed By:

Line Manager/Supervisor: _____ **Employee:** _____