

OADBY & WIGSTON BOROUGH COUNCIL CAPABILITY POLICY AND PROCEDURE FEBRUARY 2014

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PART 1: Background

Oadby & Wigston Borough Council (“the Council”) expects all its employees to achieve a required standard of performance when carrying out their role. It also has a duty to consider the welfare of all of its employees. It is against this background that this policy and procedure has been designed.

PART 2: Scope

This policy and procedure applies to all employees of Oadby and Wigston Borough Council.

Should any matter ultimately be deemed to warrant disciplinary action then this will be dealt with in accordance with the Council’s Disciplinary policy and procedure.

This policy and procedure is not applicable to employees within their probationary period. For more information see the Probation policy and procedure.

This policy and procedure does not apply to the Chief Officers; namely the Director of Services and the three Statutory Officers - the Chief Executive Officer, Monitoring Officer and the Chief Finance Officer (section 151 officer). Reference should be made to the Constitution of the Council and the appropriate Standing Order pursuant to the Local Authorities (Standing Orders) (England) Regulations 2001 in respect of these Officers.

This policy and procedure applies to all other staff, irrespective of length of service, status or number of hours worked.

This policy and procedure forms part of the Employee Handbook and is available on the intranet. It will also form part of the induction process of new employees. The policy and procedure does not form part of the normal terms and conditions of employment of any employee.

All Officers who may be required to undertake investigations under this policy and procedure will receive training on its operation and refresher training as considered necessary by HR.

Capability matters will be addressed and dealt with as swiftly as the case permits. This policy and procedure provides working guidelines to adhere to. It is accepted that in certain circumstances these timescales can be extended with authorisation from the Head of Corporate Resources.

The Council reserves the right to change the terms of this policy from time to time in order to comply with legislative requirements or as otherwise necessary, following appropriate consultation with the Trade Union in cases of substantial variation.

In the case of the named officers and appendices being changed following training and recruitment of employees within the Council, the Head of Corporate Resources shall have delegated authority to make such updated changes, without Trade Union consultation.

PART 3: Purpose

The Council has designed this policy and procedure in order to clarify the rights and responsibilities of employees in respect of capability matters. The overriding objective is to ensure that a fair, reasonable and consistent approach is observed in applying the capability procedure.

It is also the purpose of this policy and procedure to ensure that an individual's performance in the work place is maintained to a satisfactory standard. When a shortfall in performance has been identified, the aim is to support employees in being able to improve, reach and maintain the standard of performance which is required in their area of work.

In all cases, capability action will only be taken if it is considered appropriate to do so in the circumstances. Both the Council and employee should (wherever practically possible) deal with issues of capability promptly, with no unreasonable delay of meetings, decisions or confirmation of those decisions.

A capability situation is one where an employee demonstrates that they may not have the skill, aptitude or necessary competencies which are needed to perform in their job. It is in these situations that this Capability policy and procedure should be used.

Where an employee does have the appropriate skills or competencies but chooses not to apply them or they demonstrate a negligent approach to their work (conduct / behaviour), this will be dealt with under the Council's Disciplinary policy and procedure.

"Incapability" refers to circumstances where an employee is unable to display the skill, aptitude or necessary competence for the job. The term implies that there is no element of choice for the employee in failing to meet the required standards in that the employee does not demonstrate the competency to carry out the role to the required standard.

Cases of ill health (physical or mental) are ordinarily dealt with in accordance with the Council's Sickness Absence Policy. However, where having initially followed the Sickness Absence Policy, it is apparent that the issue is one of capability then this Capability policy and procedure will be used. Any subsequent sickness will then be considered under this Capability policy and procedure.

PART 4: Equal Opportunities

The Equality Act 2010 provides the legal framework to combat unlawful discrimination and provides Public Authorities with general and specific duties relating to equality. The Council will do its utmost to uphold these duties and will always have due regard for the requirement to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act.

- Advance equality of opportunity between persons who share a protected characteristic and persons who do not share it;
- Foster good relations between persons who share a protected characteristic and persons who do not share it.

The Council is committed to having a dignified and respectful working environment which includes and encourages all staff to develop and make progress.

This policy enhances the Council's approach to equality by ensuring openness and transparency.

PART 5: Roles and Responsibilities

Line Manager	<p>Line Managers are responsible for setting realistic and achievable goals for employees.</p> <p>They should monitor the performance of employees under their supervision to identify shortfalls and consider whether appropriate action needs to be taken in accordance with this Capability policy and procedure.</p> <p>They are also responsible for supporting and reviewing the performance of individuals who have been placed on a programme of capability monitoring at agreed times in order to review whether the required standard of performance has been achieved.</p>
Employee	<p>Employees have a contractual responsibility to achieve a level of performance which is prescribed by the Council.</p> <p>Where it is deemed that an employee is not achieving to the required standard of performance, they are responsible for taking the appropriate action towards correcting any underperformance and for improving any areas of concern.</p>
HR note taker HR advisor (Corporate Resources)	<p>This is a confidential, independent and impartial Officer who will take minutes at all investigatory meetings and capability / appeal hearings. They will have no part in any decision making.</p> <p>It is the role of HR to advise and support Line Managers throughout the capability process and in the application of this policy and procedure. They will have no part in any decision making.</p> <p>Where assistance from HR is unavailable or not permissible a suitably trained officer from Corporate Resources will be nominated to assist.</p>
Trade Union or workplace colleague	<p>All employees have the right to be accompanied at a Capability Hearing. The employee may be accompanied by:</p> <p>A workplace colleague A Trade Union representative</p>

	<p>To avoid duplication of advice and materials, if an employee has representation, all correspondence and exchange will take place directly with the representative. It is for the representative to keep the employee apprised of the progress and to supply them with copy materials if required.</p> <p>A workplace colleague or a Trade Union representative can attend any Capability Hearing to support the employee but is not permitted to answer any questions asked of the employee in such a situation. In all cases, any Trade Union representative who is not employed must have written certification from the Union as being competent to accompany the employee.</p> <p>No external representation is permitted.</p>
Capability Officer	The Capability Officer will be a trained Officer from the list at Appendix A of this policy and procedure who will independently and impartially conduct a Capability Hearing.
Capability Panel	The Capability Panel will consist of two Capability Officers from the list at Appendix A of this policy and procedure, one of whom will be nominated as the Capability Chair.
Appeal Panel	The Appeal Panel will consist of three trained Members from the list at Appendix B of this policy and procedure who will independently and impartially conduct the Appeal Hearing, one of whom will be nominated as the Appeal Chair.

PART 6: Stage 1 – Informal Procedure

It is mandatory, in accordance with this policy and procedure, that informal action is considered in the first instance.

Once a performance related issue has been identified, Line Managers, in consultation with HR, will write to the employee, setting out the nature of the issue(s) which have been identified and inviting the employee to attend at an informal capability meeting to discuss these concerns with the employee's performance. The meeting will be conducted by the employee's Line Manager. Where it is considered appropriate by the Council, a member of HR may also be present.

The purpose of an informal capability meeting is to discuss the employee's performance and decide what measures should be taken, if any, with a view to securing the required improvement in the employee's performance.

The employee will be afforded an opportunity to respond to any comments about their performance and to put forward any explanation they may have for the matters amounting to poor performance, as identified by the Line Manager.

The Line Manager will determine the outcome of the meeting in consultation with HR. The outcome will be explained to the employee at the meeting and the Line Manager will subsequently write to the employee to confirm the same.

The outcome of the meeting will be:

- a) a decision to take no further action (ordinarily where the employee can demonstrate that this was a minor, isolated incident, or can offer some other reason for their performance issue which is more appropriately addressed in another manner);
- b) a decision to refer the matter for investigation under the Council's Disciplinary policy and procedure, where it is deemed that the issue is conduct related rather than performance related; or
- c) the implementation of a Capability Programme (as set out below), intended to bring the employee's performance up to an acceptable level.

Capability Programme

A Capability Programme is a series of measures which are intended to improve an employee's performance, where a shortfall has been identified. These measures will be determined by the Line Manager and will be set out clearly for the employee in the letter which follows the informal capability meeting.

Where possible, the Line Manager will consult with the employee in formulating the Capability Programme, however, the measures are ultimately for the Line Manager to determine at their absolute discretion and the Line Manager reserves the right to insist on any aspect of the Capability Programme in the absence of such agreement.

For an example of a template Capability Programme, see **Appendix C** of this policy and procedure.

Each programme will be tailored to the particular situation, but, as a minimum, will contain the following elements:

a) **Timescale**

The overall timescale in which the necessary improvement must be achieved will be set out, together with the timescale for reaching individual milestones, where appropriate.

Ordinarily a Capability Programme will last for a minimum of 4 weeks up to a maximum of 8 weeks.

b) **Targets**

The Capability Programme will specify the particular areas in which improved performance is needed and will set out exactly how, and on what criteria, the employee's performance will be assessed. Where appropriate, specific targets will be set that will need to be achieved either by the end of the Capability Programme or at identifiable stages within it.

c) **Measures**

The Capability Programme will specify what measures will be taken by the Council to support the employee in improving their performance. Such measures may include training, additional supervision, the reallocation of other duties, or the provision of additional support from colleagues.

d) **Feedback**

As part of the Capability Programme, the employee will be given regular feedback (fortnightly as a minimum) from the Line Manager indicating the extent to which the employee is on track to deliver the improvements set out in the Capability Programme.

For an example of a template Capability Programme feedback form, see **Appendix D** of this policy and procedure.

If, at any stage, the Line Manager feels that the Capability Programme is not progressing in a satisfactory way, they should discuss their concerns with HR. If it is agreed that insufficient progress has been made then a further meeting may be held with the employee to discuss the issue, with a representative from HR present. As a result of such meeting, the Line Manager may amend (i.e. targets or performance) and/or extend (i.e. time) any part of the Capability Programme in consultation with the representative from HR.

In any event, the Capability Programme cannot be extended for longer than 8 weeks.

If, at any stage, it is agreed that the employee has reached an acceptable standard of performance, this will be made clear during the feedback meeting and the matter will be considered as addressed, with no need for further review (subject to paragraph (f) below). HR will be notified accordingly.

e) **Review**

At the end of the Capability Programme (maximum 8 weeks), the employee's performance will be reviewed. If satisfactory progress has been made, the employee will be notified of this fact in writing and they will be advised that their performance will continue to be subject to monitoring for a further period of 12 months (as set out in point (f) below).

If the Line Manager feels that progress has been insufficient or that the employee's performance still falls below the required standard, they may decide to amend (i.e. targets or performance) and/or extend (i.e. time) the Capability Programme to such extent as the Line Manager considers appropriate, in consultation with HR (an extension to the Capability Programme cannot exceed the maximum of 8 weeks in totality). Alternatively they may decide to invoke the formal procedure as set out in Section 7 of this policy and procedure, in consultation and agreement with their Head of Service and HR.

Where the maximum period of 8 weeks permitted to implement a Capability Programme has been exhausted and the Line Manager still feels that the progress has been insufficient or that the employee's performance still falls below the

required standard, the Line Manager must invoke the formal procedure, in consultation with HR.

f) **Ongoing review**

Following the successful completion of a Capability Programme, the employee's performance will continue to be monitored. If, at any stage during the subsequent 12 months, the employee's performance again starts to fall short of an acceptable standard, their Line Manager will invoke the formal procedure as set out in Section 7 of this policy and procedure.

PART 7: Stage 2 – Formal Procedure

If the Capability Programme has not led to sufficient improvement in the employee's performance or if the employee's performance is still perceived by the Line Manager to fall below the required standard, the Line Manager may invoke the formal capability procedure, following consultation with HR and their Head of Service.

First Capability Hearing

HR will write to the employee and invite them to attend a formal Capability Hearing. The letter will set out the reasons why the Line Manager believes that the employee's performance still falls short of an acceptable standard.

The Capability Hearing is intended to give the employee the opportunity to respond to any concerns regarding their performance and to make representations about any aspect of the way in which the process has been managed.

The outcome of the meeting may be a decision to:

- a) take no further action (ordinarily where the employee can show a marked improvement in performance or can offer some exceptional mitigating circumstances which were not presented at the time of the Capability Programme being implemented);
- b) refer the matter for investigation under the Council's Disciplinary policy and procedure, where it is deemed that the issue is conduct related rather than performance related;
- c) institute another Capability Programme (this will only usually be relevant where the employee can demonstrate that some progress towards satisfactory performance was made during the original Capability Programme and the Capability Panel reasonably believe that further improvement will be made); or
- d) issue one of the capability sanctions to the employee (see Part 9 of this policy and procedure)

The level of sanction applied in accordance with (d), above, will be determined on the facts of the matter and will often depend on the severity of the under performance and the effect that it is having on the operation and reputation of the Council.

Dismissal is not appropriate at the first Capability Hearing. An Improvement Note will ordinarily be given unless the under performance is so severe that a Final Written Warning is justified (e.g. the under performance has resulted in some reputational damage to the Council or has caused a financial loss).

HR will write to the employee to advise them of the outcome of the Capability Hearing. Where a capability sanction has been imposed, the letter setting out the sanction will also give the following information as a minimum:

- a) The reason and duration of the capability sanction (for more information refer to Part 9 of this policy and procedure);
- b) Dates when review of the under performance will be undertaken (on a fortnightly basis);
- c) What change in the employee's performance is expected and what the further consequences there may be if the unsatisfactory performance continues; and
- d) That a minimum of 6 weeks must pass before the second Capability Hearing can be convened, where no improvement is identified during the reviews of performance.

Second Capability Hearing

If an employee has already received a capability sanction that remains live and, following the appropriate review, the employee's Line Manager believes that the employee's performance is still not acceptable or that sufficient progress has not been made, the matter may be referred by the employee's Line Manager to a second Capability Hearing, in consultation with HR.

HR will write to the employee setting out the grounds on which the second Capability Hearing is being convened. In particular, the employee will be advised of those aspects of their performance which remain below an acceptable level.

The second Capability Hearing is intended to give the employee a further opportunity to respond to any concerns regarding their performance and to make representations about any aspect of the way in which the process has been managed.

The same Capability Officers may sit on the Capability Panel at any subsequent Capability Hearings as they have a knowledge and understanding of the facts of the case. However, the same Capability Officers shall not sit on the Capability Panel if HR deems that this would have a prejudicial effect on the interests of the employee and the Council reserves the right to change the members of the Capability Panel in its absolute discretion.

The outcome of the meeting may be a decision to:

- a) take no further action (ordinarily where the employee can show a marked improvement in performance or can offer some exceptional mitigating circumstances which were not presented at the time of the first Capability Hearing);

- b) where an Improvement Note was issued at the first Capability Hearing, and there has been progress made towards rectifying the unsatisfactory performance albeit not sufficient to warrant no further action, issue a Final Written Warning;
- c) offer to redeploy the employee to an alternate post of employment within the Council if available / applicable (see below); or
- d) where a Final Written Warning was issued at the first Capability Hearing and there has been no improvement or where an Improvement Note was issued at the first Capability Hearing and the employee cannot demonstrate an effort to bring their performance to a satisfactory level, to dismiss the employee.

HR will write to the employee to advise them of the outcome of the Capability Hearing.

Where a Final Written Warning has been issued, the letter from HR will also give the following information as a minimum:

- a) The reason for and duration of the Final Written Warning (for more information refer to Part 9 of this policy and procedure);
- b) Dates when review of the under performance will be undertaken (on a weekly basis);
- c) What change in the employee's performance is expected and that dismissal may result if the employee's performance does not improve; and
- d) That a minimum of 6 weeks must pass before the final Capability Hearing can be convened, where no improvement is identified during the reviews of performance.

Where there has been a decision to dismiss, the letter from HR will set out the reasons for dismissal and it will advise the employee of their right to appeal the decision to dismiss, in accordance with Part 14 of this policy and procedure.

Final Capability Hearing (if required)

Where a Final Written Warning was imposed at a second Capability Hearing, if, following the fortnightly reviews of the employee's performance, the Line Manager believes that there has still been no significant improvement in the employee's performance within the specified period, the third and final Capability Hearing will be reconvened to consider the issue for a final time. At this third and final Capability Hearing, the Capability Panel shall determine whether to dismiss the employee.

For a 'quick glance' flow chart, see **Appendix E** of this policy and procedure.

Redeployment

In exceptional cases, where an employee has demonstrated a skill set during their current employment for another vacant employment position which is being offered by the Council and where the Council's business interests are likely to be met by this employee, the Council may, at its absolute discretion, consider redeployment as an alternative to dismissal, in consultation with HR.

PART 8: Capability Hearing

Minutes

In all cases, all Capability / Appeal Hearings will be minuted in writing by the HR note taker. The minutes shall be signed by all parties present at the Capability / Appeal Hearings, within 5 working days.

If the employee wishes to make minor and non-substantive amendments to the minutes, these must be agreed by the employee and the Chair of the Capability / Appeal Hearing promptly and within this 5 day period in any event, unless this is not practically possible.

Where the employee refuses to accept the minutes or wishes to make substantive changes to the minutes, then a copy of both sets of minutes shall be retained on the employee's file.

Representation

No external representation (legal or otherwise) will be allowed.

The employee will be permitted to be accompanied at a Capability / Appeal Hearing by a workplace Trade Union representative, a workplace colleague or an official employed by a Trade Union. Any workplace Trade Union representative must have a certification (in the form of a letter or card) from their Trade Union as having experience of or training in representation of employees at a Capability Hearing.

The representative will be allowed to address the Capability / Appeal Hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the Capability / Appeal Hearing. The representative does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the Council from explaining their case.

In any case, where there appears to be a potential conflict of interest, the request to be accompanied by that individual will be rejected. It is open for the employee to request to be accompanied by another suitable representative who meets the requirements set out above.

HR, in rejecting the request must as a bare minimum provide:

- a) written reasons for the refusal and
- b) advise the employee of their right to request a different representative in accordance with their statutory right.

In the case of an employee asking for a work colleague as a representative, HR will make the request to the Head of Service of the work colleague. The Head of Service must provide written confirmation that he/she authorises the release of the work colleague to assist, having considered the reasonable business and operation of the Council.

In the case of a Trade Union representative not being able to represent an employee in that capacity owing to membership eligibility, etc, that Trade Union representative, before

acting as a work colleague, must obtain appropriate authorisation first from their Head of Service that they may act in the capacity as a work colleague. Again, this is so as to ensure that the Council's business and operation is not unreasonably hindered since there are likely to be other suitable work place colleagues that may assist.

An employee is entitled to request the assistance from any work colleague who is willing to do so, but this must be done with the Head of Service.

Witnesses

It is not possible under this policy and procedure for witnesses to be involved in a matter concerning the alleged incapability of another at the informal stage. However, it is recognised that there may be limited occasions where witnesses might be able to assist at a Capability / Appeal Hearing, where documentary evidence alone is insufficient.

Any employee wishing to call witnesses to assist with their defence at a Capability / Appeal Hearing must provide written notification of the names of the witness(es) and the service area where they are employed. The written notification must be given to HR at least 3 working days before the date of the Capability / Appeal Hearing. This is done to afford a level of protection to the employee so that allegations or suggestions of undue influence or impropriety cannot be made and so as to preserve confidentiality of the matter.

Any witness giving evidence at a Capability / Appeal Hearing who is subsequently found to have deliberately misled the hearing or who has knowingly provided untruthful or misleading evidence may be subject to a separate disciplinary case of misconduct, requiring an investigation under the Council's Disciplinary policy and procedure.

The Capability Hearing

The Capability Panel will nominate a Capability Chair who will lead the Capability Hearing.

The Capability Panel will be assisted by a HR advisor (or suitably trained officer from Corporate Resources) who will act as advisor to ensure that correct procedures are being followed. The HR advisor will take no part in the decision making at the Capability Hearing and will not determine the sanction to be imposed. They will provide guidance for the usual sanction in respect of the nature of the underperformance being determined in order to promote consistency in the Council.

The employee has the right to be accompanied and assisted by a Trade Union representative or work place colleague (as set out above).

The Capability Hearing will be minuted by the HR note taker.

If there is course for any witnesses to be involved in the Capability Hearing, they should not be present throughout the duration of the Capability Hearing. They should be called in, one by one, to give their evidence and asked to withdraw once they have done so.

The process of the Capability Hearing will normally be as follows. However if the Capability Chair deems it necessary for the efficiency, transparency and / or fairness of the hearing, advice may be taken from the HR advisor (or suitably trained officer from

Corporate Resources) as to whether a departure from this procedural timetable may be warranted:

- a) The Capability Chair will provide an explanation of the purpose of the Capability Hearing and the procedure to be followed, introducing all those present. The Chair will ask all those present whether there is any known conflict of interest / question as to impartiality at the outset. S/he will read the grounds for convening the Capability Hearing (i.e. the employee's underperformance) aloud and ask the employee if s/he wishes to take the opportunity to admit or deny them.
- b) If at any time during the proceedings it becomes apparent that there is no case for the employee to answer, an immediate adjournment may be called by the Capability Chair, to consider making a recommendation that the Capability Hearing is concluded with a recommendation that no further action be taken. In all cases, written reasons will be provided for making such a recommendation.
- c) The Capability Hearing may be adjourned by the Capability Chair if it is considered necessary to gather further information or evidence or clarify any issue. In any event the Capability Hearing will be reconvened as soon as possible and certainly no later than 10 working days of the adjourned Capability Hearing.
- d) If the employee admits to the underperformance, s/he will be asked if they or their representative wish to offer any explanation for the same or whether they want any mitigating circumstances taken into account. At this stage, the Capability Panel can proceed to stage (v) onwards below OR can apply their discretion to proceed as normal where necessary to determine an appropriate outcome.
- e) If the employee denies the allegations, the procedure will progress as follows in (f) – (y) below however the Capability Chair has the discretion to change the order of the procedure if necessary.
- f) The Line Manager will outline the employee's underperformance giving rise to the Capability Hearing in the presence of the employee and his/her representative.
- g) The employee or his/her representative shall be given an opportunity to reply to these comments and ask questions of the Line Manager.
- h) The Line Manager may call witnesses, if required and notified in advance (as set out above).
- i) The employee or his/her representative shall have the opportunity to question any witnesses called by the Line Manager.
- j) The Capability Panel may ask questions for clarification of the Line Manager and any witnesses.
- k) The employee or his/her representative shall outline why they believe the employee has achieved the required standard of performance in the presence of the Line Manager.
- l) The Line Manager shall have the opportunity to ask questions of the employee, his/her representative and of any witnesses called by the employee.

- m) The Capability Panel may ask questions for clarification of the employee, his/her representative and any witnesses called by the employee.
- n) The employee or his/her representative may call witnesses.
- o) The Line Manager shall have the opportunity to question any witnesses called by the employee or his/her representative.
- p) The Capability Panel may ask questions for clarification of the employee and any witnesses.
- q) The Capability Panel will consider whether it is necessary for any other witnesses to be called in order to ensure a fair process in light of all the evidence.
- r) Where the Capability Panel calls witnesses during the Capability Hearing, the witness or witnesses shall be called in turn and for each witness the procedure shall be:
 - (i) members of the Capability Panel question the witness
 - (ii) the employee or representative question the witness
 - (iii) the Line Manager questions the witness
- s) The Line Manager shall have the opportunity to sum up the case as to why they believe the employee has failed to achieve the required standard of performance, but may not introduce any new material.
- t) The employee or his/her representative shall have the opportunity to explain outline why they believe the employee has achieved the required standard of performance, but may not introduce any new material.
- u) The Capability Panel should ask the employee whether he or she has anything else to say or clarify.
- v) The employee, his/her representative, the Line Manager and the HR note-taker shall all withdraw.
- w) If recall is necessary, both parties (Line Manager and employee, accompanied by his/her representative) are to return regardless of the point giving rise to further clarification. The HR note taker also needs to be present to record the point of clarification.
- x) The Capability Panel shall withdraw and consider the matter in private, in consultation with the HR advisor (or suitably trained officer from Corporate Resources). They must first decide whether on the balance of probabilities, taking due regard of all the facts, the employee has failed to achieve the required standard of performance. If it is considered that the employee's performance has fallen below the required standard, and before imposing a capability sanction they must consider:
 - the level of capability sanction indicated by the procedure;
 - any special, mitigating circumstances which might make it appropriate to lessen the sanction;

- the employee's capability record and in particular whether there are any other “unexpired” capability sanctions;
 - how the Council has dealt with similar cases in the past;
 - whether the proposed capability sanction is reasonable in view of all the circumstances.
- y) The Capability Chair shall call all parties back to the Capability Hearing and inform them of the decision at the conclusion of the deliberations. Written confirmation of the decision shall be sent to the employee within 5 working days of the Capability Hearing, as well as a copy of the minutes of the Capability Hearing.

Section 9 below provides details of what information should be given to the employee on notification of any sanction.

- z) The Capability Chair, the HR advisor (or suitably trained officer from Corporate Resources) and the employee (or his/her representative) should sign the minutes of the Capability Hearing as a true record of the meeting.

If the employee wishes to make minor and non-substantive amendments to the minutes, these must be agreed by the employee (or his/her representative) and the Capability Chair promptly and within this 5 day period in any event, unless this is not practically possible.

Where the employee refuses to accept the minutes or wishes to make substantive changes to the minutes, then both sets of minutes shall be retained on file and presented at any subsequent Capability / Appeal Hearing.

PART 9: Capability Hearing Sanctions

In cases where the Capability Panel has determined that there is no capability issue, the Capability Chair will write to the employee setting out their reasons for reaching this decision within 5 working days of the Capability Hearing.

In all other cases, imposition of a capability sanction will only be imposed where it has been determined after a Capability Hearing that the employees standard of work has still failed to reach the required level.

One of the following sanctions will be applied:

Improvement Note

At the first Capability Hearing, where the employee’s performance is deemed not to meet acceptable standards then an improvement note will normally be issued to the employee unless the performance standard is severe enough to warrant a final written warning or dismissal.

As a bare minimum, the employee should be advised of the following:

- a) The reason and duration of the improvement note (i.e. 6 or 12 months)
- b) That the improvement note is the lowest level of formal capability sanction to be given for unsatisfactory performance
- c) Dates when review of the performance complained of in the improvement note will be undertaken
- d) What change in their performance is expected and what the further consequences may be if the unsatisfactory performance continues.
- e) That they have a right of appeal which must be in writing and must be received by the Head of Corporate Resources within 5 working days of the improvement note being received
- f) The employee will be asked to refer to this policy and procedure for more information.

A copy of the improvement note detailing the performance issues and the improvement that is required by the employee will be kept on the HR file for a period of 6 or 12 months depending on the circumstances of the case (such as the nature of the work where improvement needs to be undertaken). The note will also detail the timescale that the employee has been given to improve their unsatisfactory performance and also the dates for review.

There will be regular review meetings held fortnightly, as a minimum.

After 6 or 12 months (whichever is appropriate) subject to achieving and sustaining satisfactory improvement in their performance, their improvement note will be considered to be discharged and will not be considered further should any performance related issue arise thereafter.

If however the employee fails to meet the required standard of performance as detailed in the improvement note then the Line Manager will consult with HR and the matter will be considered for a second Capability Hearing, as set out in Section 7 of this policy and procedure.

Final Written Warning

In cases where the underperformance of the employee is so severe, for example, where it has resulted in serious reputational or financial damage to the Council, the employee may be given a final written warning if appropriate to do so.

Where, following the issue of an Improvement Note was issued at a first Capability Hearing, a second Capability Hearing has been convened and the employee has made sufficient progress towards rectifying the unsatisfactory performance albeit not sufficient to warrant no further action, it is likely that a Final Written Warning will be issued, unless there are extenuating factors which warrant a dismissal.

As a bare minimum, the employee should be advised of the following:

- a) The reason for the final written warning
- b) That it is the highest capability sanction to be given in cases of underperformance prior to dismissal
- c) Dates when review of the unsatisfactory performance which led to the final written warning will be undertaken
- d) What change in the employee's performance is expected and what the further consequences may be if the unsatisfactory performance continues

- e) That they have a right of appeal which must be in writing and must be received by the Head of Corporate Resources within 5 working days of the final written warning being received
- f) The employee will be asked to refer to this policy and procedure for more information.

A copy of the final written warning will be kept in the HR file of the employee for a period of 18 months. After this time the final written warning will be disregarded in terms of the capability issue for which it was given, but will remain in the employees HR file indefinitely.

There will be regular review meetings held fortnightly, as a minimum.

Dismissal / summary dismissal

The employee may be dismissed at the second Capability Hearing where a Final Written Warning was issued at the first Capability Hearing and there has been no improvement, or where an Improvement Note was issued at the first Capability Hearing and the employee cannot demonstrate sufficient progress in bringing their performance to a satisfactory level.

Alternatively, where a Final Written Warning was imposed at a second Capability Hearing and a final Capability Hearing is now required the Capability Panel may decide to dismiss the employee.

Any dismissal will be with notice or payment in lieu of notice, at the absolute discretion of the Council.

In cases of dismissal, consultation must be made with a Chief Officer and/or the Head of Corporate Resources.

In all cases of dismissal, the employee will be provided with written confirmation of the following as a bare minimum:

- a) The reason for the dismissal
- b) The date on which employment will terminate, setting out details in respect of outstanding pay, holidays, notice periods and any deductions from pay
- c) A date for the employee to collect their belongings and return Council property
- d) That they have a right of appeal, which must be in writing and must be received by the Head of Corporate Resources within 5 working days of the letter of dismissal being received.
- e) The right of the employee to be accompanied at the appeal by a Trade Union representative, workplace colleague or an official employed by a Trade Union. In all cases, any Trade Union representative who is not employed must have a written certification from the Union as being competent to accompany the employee.
- f) The employee will be asked to refer to this policy and procedure for more information.

A summary of the sanctions that may be imposed is as follows, although each case should be determined on its own facts:

Performance Issues
Improvement Note
Final Written Warning
Dismissal

PART 10: Examples of performance issues

Examples of performance related issues which may indicate incapability and may give rise to the capability procedure being invoked include, but are not limited to, the following:-

- a) Knowingly failing to follow appropriate procedures and/or policies
- b) Lack of attention to detail
- c) Carelessness
- d) Incompetence
- e) Failure to conform to reasonable time limits
- f) Unreasonable delays in the performance of a task
- g) Failure to meet expected and agreed standards of delivery
- h) General unsatisfactory performance
- i) Failure to take ownership of a task or duties within the employee's roles and responsibilities

PART 11: Confidentiality

At all stages of the capability process, both the Council and the employee must ensure the confidentiality of events and discussions. This does not include sharing such confidence when seeking advice either from a Trade Union or from HR.

Any unreasonable breach of confidentiality may be treated as a disciplinary offence, requiring investigation in accordance with the Council's Disciplinary policy and procedure.

PART 12: Referrals to Occupational Health

In cases where the capability procedure is being contemplated in respect of sickness absence, referrals to Occupational Health or a medical health expert and / or the employees' GP will be considered by HR.

PART 13: Failure to attend a Capability Hearing

Prior notification to employer

If an employee is unable to attend any Capability / Appeal Hearing set out under this policy and procedure, the employee must notify HR in writing no later than 3 working days prior to the hearing.

If sickness prevents an employee from attending the Capability / Appeal Hearing then normal procedures for informing the Line Manager about sickness will apply. However, the employee must also let HR know in relation to the Capability / Appeal Hearing.

Upon cancellation of a pending meeting / hearing, the employee shall be sent notice by way of letter, setting out the time, place and date of the adjourned meeting or hearing. The letter shall remind the employee of the right to representation in the case of any Capability / Appeal Hearing.

A Capability / Appeal Hearing may be cancelled twice by the employee, with reasonable justification.

Should the employee have already cancelled the Capability / Appeal Hearing twice, then the hearing shall go ahead at the third attempt even if the employee does not or cannot attend. This shall be made clear in the letter sending out the final adjourned date to the employee. In exceptional circumstances, this may be extended further with authority from the Head of Corporate Resources.

Failure of Employee to Attend – without notification

If an employee does not attend the Capability / Appeal Hearing and does not provide prior written explanation as set out above, giving a reasonable justification for non-attendance, a letter will be sent to the employee with details of a new date for the Capability / Appeal Hearing.

It shall be set out in the letter that if the employee does not attend the adjourned Capability / Appeal Hearing then or the hearing will take place without them and a decision will be based on the evidence that the Capability / Appeal Hearing Panel has available to them at the time of them convening to determine the matter.

It must also be clarified in the letter that the Capability / Appeal Panel may recommend that the non-attendance of the employee be considered as a matter warranting separate investigation under the Council's Disciplinary policy and procedure.

If the employee does not attend the adjourned Capability / Appeal Hearing and has not provided a reasonable justification or written explanation for non-attendance, the Capability / Appeal Hearing Panel will proceed with the hearing at the time stipulated.

PART 14: Appeals

An employee has the right to appeal against a decision to dismiss.

Any appeal may be lodged on three grounds as follows:-

1. The level of underperformance did not warrant dismissal;
2. There has been a procedural error; and/or
3. New evidence, relevant to the matter, has come to light.

Procedure for making an appeal

Any employee wishing to appeal a decision to dismiss must do so in writing to the Head of Corporate Resources within 5 working days of receiving written notification of dismissal.

The letter of appeal must be in writing and state the reasons for the appeal. It must also attach documents that the employee wishes to be considered as part of the appeal, if any.

Documents that are not attached or referred to in the letter of appeal will not be considered as part of the appeal process, save in exceptional circumstances (for example where the existence of such documents was not known to the employee at the time of submitting the appeal)

Procedure to be followed after the submission of an appeal

The Appeal Panel shall be from a pool of three trained Members, as set out at **Appendix B**, who have no previous involvement in the matter.

At all times a HR advisor (or suitably trained officer from Corporate Resources) will sit with the Appeal Panel to advise on procedure only. They will have no bearing on the decision. No member of the Appeal Panel will have been involved in the matter previously.

The employee should be advised in writing of his or her right to be accompanied at the appeal meeting by a Trade Union representative, a workplace colleague or an official employed by a Trade Union. In all cases, any Trade Union representative who is not employed must have a written certification from the Union as being competent to accompany the employee.

PART 15: The Appeal Hearing

The appeal should be conducted in accordance with the procedure set out below, with a HR minute taker present.

Only one Capability Officer need attend the Appeal Hearing. This will ordinarily be the Capability Chair, but the attendance of the second Capability Officer will be deemed sufficient, where the Capability Chair is unable to attend.

The appeal will be heard as soon as possible but not normally later than 10 working days from the date of receiving the employee's request for appeal.

It must be made clear at the outset that this is not a rehearing of the Capability Hearing but it is to consider what is stated in the appeal letter i.e. decision to dismiss disproportionate, procedural error and / or new evidence.

At all times the Chair of the Appeal Panel shall ensure that any questions asked of witnesses relate only to matters related to the grounds of appeal only.

The Appeal hearing will normally be conducted as follows. However if the Appeal Chair deems it necessary for the efficiency, transparency and / or fairness of the hearing, advice may be taken from the HR Advisor (or suitably trained officer from Corporate Resources) as to whether a departure from this procedural timetable may be warranted.

- a) Prior to the commencement of the Appeal Hearing, the Appeal Panel will appoint a Chair
- b) The Chair of the Appeal Panel will open the proceedings with an explanation of the purpose of the Appeal Hearing and the procedure to be followed, introducing those present and confirming that no member of the Appeal Panel has any conflicting interest in the matter before them. S/he will read aloud the employee's reason for lodging an appeal as submitted in writing to the Head of Corporate Resources.
- c) The employee and/or his/her representative will put his/her case in the presence of the Appeal Panel outlining the grounds for the appeal and the reasons why they feel the original decision was incorrect. The employee or his/her representative shall call any witnesses or refer to any documents as necessary.
- d) Where the employee calls witnesses during the Appeal Hearing, the witness or witnesses shall be called in turn and for each witness the procedure shall be:
 - (i) the employee or representative question the witness
 - (ii) the Capability Officer questions the witness
 - (iii) members of the Appeal Panel question the witness
- e) The Capability Officer will ask questions of the employee.
- f) The Appeal Panel will ask questions of the employee.
- g) The Capability Officer will put the case for capability action in the presence of the employee and his/her representative, calling witnesses and referring to documents, as necessary. Witnesses shall be called in turn and for each witness the procedure shall be:
 - (i) the employee or representative question the witness
 - (ii) the Capability Officer questions the witness
 - (iii) members of the Appeal Panel question the witness
- h) The employee and/or representative will ask questions of the Capability Officer
- i) The Appeal Panel will ask questions of the Capability Officer
- j) The Appeal Panel will consider whether it is necessary for any other witnesses to be called in order to ensure a fair process in light of all the evidence.

- k) Where the Appeal Panel calls witnesses during the Appeal Hearing, the witness or witnesses shall be called in turn and for each witness the procedure shall be:
 - (i) members of the Appeal Panel question the witness
 - (ii) the employee or representative question the witness
 - (iii) the Capability Officer questions the witness
- l) The Capability Officer and the employee and/or his/her representative will sum up their respective cases and then withdraw.
- m) The Appeal Panel will consider the case in private with the representative from Corporate Resources. The HR advisor (or suitably trained officer from Corporate Resources) will have no part to play in the decision making process and will be present for guidance only for the Panel. The Appeal Panel must decide whether on the balance of probabilities, taking due regard of all the facts, the appeal is upheld or rejected. The decision of the Appeal Panel shall be notified to the employee verbally at the end of the hearing in the presence of the Capability Officer and shall be confirmed in writing within 5 working days of the Appeal Hearing.
- n) The decision of the Appeal Panel shall be final and there shall be no further right to appeal.

PART 16: General

Sample letters and assistance with letters sent to employees as a result of this procedure will be available from HR on request.

PART 17: Review and Monitoring

This policy and procedure will be reviewed jointly by Trade Unions (on behalf of the employees) and management team on an annual basis.

In the case of the named officers and appendices being changed following training and recruitment of employees within the Council, the Head of Corporate Resources shall have delegated authority to make such updated changes, without Trade Union consultation.

PART 18: Note

For the purpose of this policy and procedure where assistance from HR is unavailable or not permissible a substitute from Corporate Resources will be nominated to assist.

At all times those who have access to email facilities will receive all communication under this policy and procedure marked "Private and Confidential" through this means.

For those employees who do not have access to email facilities or who are absent from work through sickness or otherwise, communication under this policy and procedure, marked "Private and Confidential" will be delivered by hand or by first class post.

Where guidelines have been given in this policy and procedure to take an action within a number of working days, these should be adhered to by both the employee and the Council. However, where occasionally it may be necessary to depart from this or extend timelines, approval should be sought from the Head of Corporate Resources. It is not anticipated that a departure from the timelines set out in this policy and procedure will be granted for any reason other than sickness or other exceptional or unanticipated occurrence that would otherwise render the process unfair. In all cases a written record shall be kept by HR of such requests and responses.

When HR approaches a named Officer or Member to undertake a role within any of the appendices, that Officer or Member should make known to HR in writing, any conflict of interest that they believe will render them unsuitable to act in an impartial and independent manner. HR will then provide written confirmation as to whether such reason or conflict prohibits them from acting in an impartial and independent manner.

The ultimate responsibility however, rests with the named Officer or Member in any of the appendices, in that at any time, when carrying out their duties they feel that information has come to light that places them in a position where they believe that their impartiality and independence is compromised, they should then seek to adjourn the process and make it known to HR immediately.

Capability Policy and Procedure

APPENDIX A – Capability Officers

2 Officers shall be appointed from the following Capability Officer's Pool to form a Capability Panel, accompanied by 1 HR note taker:

The Capability Panel will be assisted by a HR advisor (or suitably trained officer from Corporate Resources) at all times.

When HR approaches a named Officer to undertake a role within any of the appendices, that Officer should make known to HR in writing, any conflict of interest that they believe will render them unsuitable to act in an impartial and independent manner. HR will then provide written confirmation as to whether such reason or conflict prohibits them from acting in an impartial and independent manner. The ultimate responsibility however, rests with the named Officer in any of the appendices, in that at any time, when carrying out their duties they feel that information has come to light that places them in a position where they believe that their impartiality and independence is comprised, they should then seek to adjourn the process and make it known to HR immediately.

Failure to raise any possible conflicts of interest or impartiality with HR as set out above may in itself be considered misconduct and be a matter that will then be investigated as appropriate in accordance with this Disciplinary policy and procedure.

Regulation & Regeneration

1. Chris Forrett
2. Jonathon Lee
3. Kirstie Rea
4. Anne Shields
5. Adrian Thorpe

Corporate Resources

1. Crystal Andrade
2. Ian Dobson
3. Lynn Middleton
4. Adam Ward

Environmental Development

1. Nick Hague
2. Carolyn Holmes
3. Avril Lennox
4. Karen Parkes
5. Margaret Smith

Operational Services

1. Brian Kew
2. Mark Sergeant

Community

1. Julie Croshaw
2. Steve Nash
3. Sandra Parker

4. John Stemp

Finance

1. Paul Loveday
2. Chris Raymakers

Customer Services

1. David Coe
2. Jacky Griffiths
3. Diljit Mahet

Heads of Service

1. Kalv Garcha
2. Andrew Kupusarevic
3. Anita Pathak-Mould

Chief Officers

1. Anne Court
2. John Dickson
3. Mark Hall

Capability Policy and Procedure

APPENDIX B – Appeal Panel Members

The Appeal Panel consisting of 3 Members from the following list will be assisted by a HR advisor (or suitably trained officer from Corporate Resources) at all times.

When HR approaches a named Member to undertake a role within Appendix D, that Member should make known to HR in writing, any conflict of interest that they believe will render them unsuitable to act in an impartial and independent manner. HR will then provide written confirmation as to whether such reason or conflict prohibits them from acting in an impartial and independent manner. The ultimate responsibility however, rests with the named Member, in that at any time, when carrying out their duties they feel that information has come to light that places them in a position where they believe that their impartiality and independence is comprised, they should then seek to adjourn the process and make it known to HR immediately.

Failure to raise any possible conflicts of interest or impartiality with HR as set out above may in itself be considered misconduct and be a matter that will then be investigated as appropriate in accordance with the Member Code of Conduct.

Elected Members

1. G A Boulter
2. J W Boyce
3. M Charlesworth
4. L Darr
5. B Dave
6. Mrs L Eaton
7. Mrs J M Gore
8. Mrs S Haq
9. J Kaufman
10. Mrs S B Morris

Capability Policy and Procedure

APPENDIX C – Capability Programme

This form should be completed by the Line Manager in the presence of the employee during the informal capability meeting. Once completed and signed, the original should be retained by the Line Manager and copies should be passed to the employee and HR (who will place this on the employee’s HR file).

Capability Programme		
Name of employee:		
Employee's job title:		
Employee's service area / team:		
Employee's Line Manager:		
	Performance concern	Timescale for improvement
1		
2		
3		
4		
5		
Performance concern 1 - improvement required (targets)		
Performance concern 2 - improvement required (targets)		

Performance concern 3 - improvement required (targets)	
Performance concern 4 - improvement required (targets)	
Performance concern 5 - improvement required (targets)	
Employee's signature:	
Line Manager's signature:	
Date:	

Capability Policy and Procedure

APPENDIX D – Capability Programme feedback form

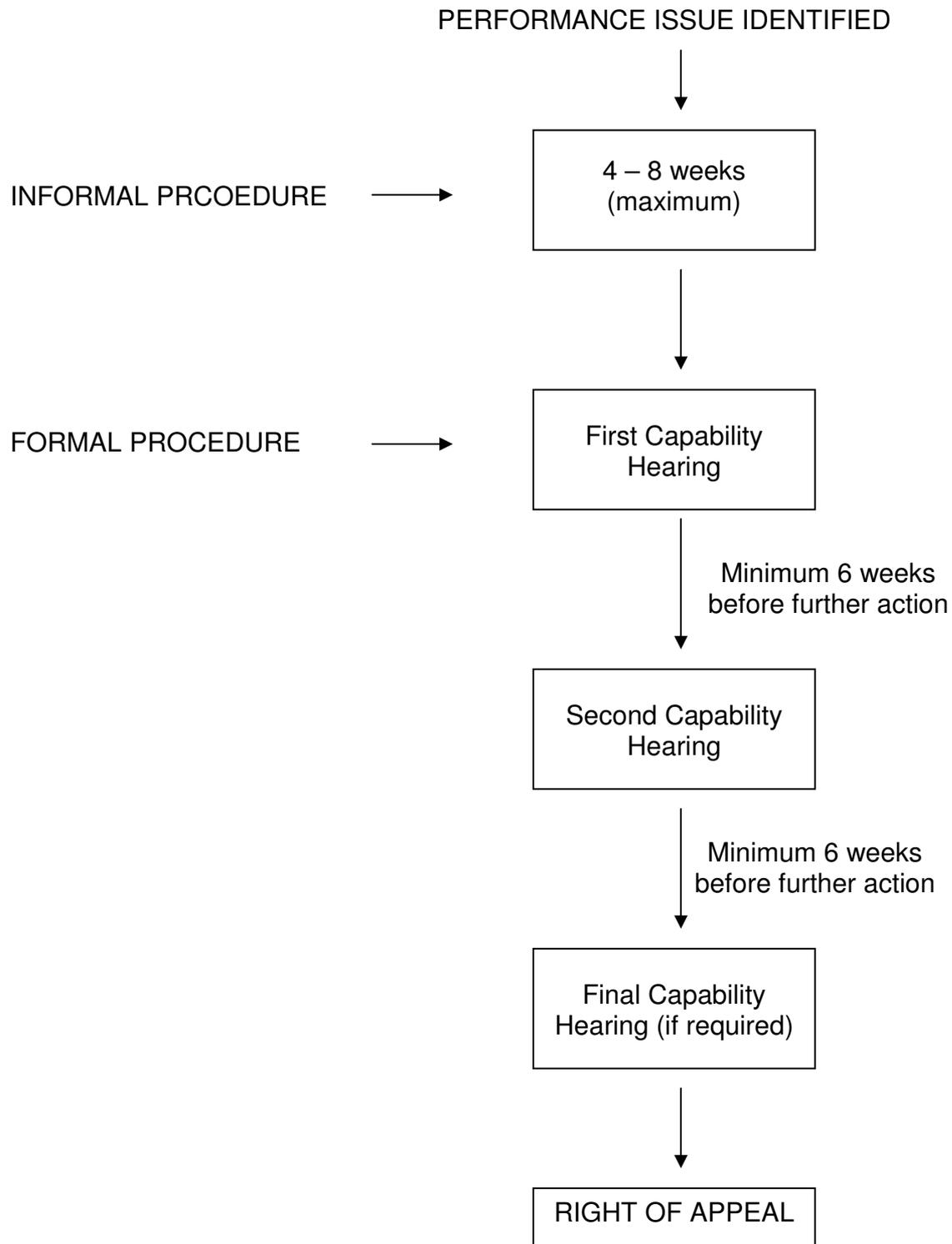
This form should be completed by the Line Manager in the presence of the employee during the regular (at least fortnightly) feedback meetings. Once completed and signed, the original should be retained by the Line Manager and copies should be passed to the employee and HR (who will place this on the employee's HR file).

Capability Programme	
Date of Capability Programme:	
Name of employee:	
Employee's job title:	
Employee's service area / team:	
Employee's Line Manager:	
Identify specific areas where performance has improved since the last form was completed:	
Identify any problems that still remain and the steps being taken to address these:	
Summary of the extent of the employee's overall improvement:	

Are any changes required to the Capability Programme? If yes, give details below:	
Employee's feedback on the process so far and any points noted above:	
Has the employee reached an acceptable standard of performance?	Yes / No
Date of next review meeting (if appropriate):	
Employee's signature:	
Line Manager's signature:	
Date:	

Capability Policy and Procedure

APPENDIX E – ‘Quick glance’ flow chart



PLEASE NOTE: this is intended as a basic overview only and is not a substitute for the detailed procedure to be followed. This Appendix should be read in conjunction with the Capability policy and procedure in its entirety