



CAPABILITY POLICY AND PROCEDURE

THIS POLICY SHOULD ANSWER THE QUESTIONS YOU HAVE WHEN
THERE IS AN ISSUE RELATING TO YOUR CAPABILITY

(Capability is defined by the *Employment Rights Act 1996 s.98(3)(a)* as
"capability assessed by reference to skill, aptitude, health or any other physical or mental quality".)

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1. What does this policy cover?

This policy and procedure applies to situations where there is concern over the capability of an employee to do the job for which they are employed whether through ill health, lack of relevant professional, academic or technical qualifications or inherent incapability to do the job.

Boston Borough Council recognises the difference between:

- a deliberate failure through negligence or carelessness on the part of an employee to perform to the standards of which they are capable. In this case Boston Borough Council will use its disciplinary procedure, and
- a case of capability, where an employee is lacking in knowledge, skill or ability and so cannot carry out their duties to the standard required. In this case the council will operate the capability policy in an attempt to improve performance.

2. What type of behaviour is covered by the term “capability”?

Examples include, but are not limited to:

- An employee whose pace of work is unacceptably slow;
- An employee who is unable to meet standards required;
- A manager who fails to establish good working relationships within the organisation– even if they are successful in terms of delivery;
- An employee who is inflexible and inadaptatable;
- An employee who is unable to carry out their job to a high standard due to health problems

3. When will a capability issue be raised?

Where there are unacceptably high levels of sickness or your level of performance is not acceptable. Persistent short-term sickness absence will be dealt with under the Council’s Sickness Absence Policy & Procedure (HR030) in the first instance. However, where short-term absence has an underlying medical problem which is recurring, the capability procedure will apply. Supervision will usually raise any need for discussion around this area. Support and/or training will usually overcome the performance issue and lead to the necessary improvement in your standard of work. Your line manager will be required to offer the necessary support or guidance where your performance is being managed and will direct you to other sources of support as deemed appropriate. You will have quarterly reviews with your line manager through the ‘my performance’ process this will also be a method of discussion.

This initial, informal discussion will be held before any formal procedure is followed and as such there is no entitlement for you to be accompanied.

4. What is the role of People Services?

The role of People Services is to advise and assist line managers in dealing with performance matters throughout the informal and formal stages. This is with the aim of ensuring consistency of application of the policy across the council.

5. What is the role of Line Managers?

Line managers are expected to take appropriate action at the earliest opportunity where they believe a member of staff's performance is falling below the required standard. If an employees capability becomes a concern it will be the responsibility of the employee's direct line manager to deal with the issue.

6. Doesn't the Disability Discrimination Act 1995 protect me if I am disabled?

If you are genuinely ill this legislation will afford you some protection. It can still be fair to ultimately take a decision to dismiss a disabled employee, but there are certain actions the Council should take before coming to that decision, such as:

- Taking proper medical advice, if necessary from a relevant specialist.
- Seeing if there are any *reasonable* adjustments that could be made that would enable you to continue in your employment, for example
 - Transferring you to another role
 - Changing your working hours
 - Allocating some of your duties to another employee
 - Allowing time off for rehabilitation treatment

Whilst this procedure is a requirement if you are disabled, it is also best practice and as such will be followed in all cases. The Sickness Absence Policy may also be followed in these cases.

7. When should Line Managers consult with People Services?

When a Line Manager is considering taking informal or formal action under the Council's Capability policy they must consult with their designated People Services Advisor at the earliest opportunity to ensure the policy is applied consistently.

8. When is a formal Stage 1 meeting held?

You will always have been invited to an informal discussion prior to a Stage 1 meeting. Where your ability to perform the duties of your post is in question and has not been resolved by an informal discussion it will be necessary to progress to this stage of the procedure. A Stage 1 meeting will be held with your Line Manager where you will be told in clear unambiguous terms the details (including examples) of inadequate performance. You will be given every opportunity to state your point of view, and offer suggestions for improvement. Given the seriousness of a failure to improve, you will be made aware that this could ultimately lead to dismissal, but that redeployment or retirement on the grounds of ill health may be alternative options if the reasons for your lack of capability are health related.

9. Who can attend a formal Stage 1 and Stage 2 meeting?

- The Line Manager
- People Services Advisor
- The employee concerned
- A trade union representative from trade unions recognised by Boston Borough Council, or a fellow Boston Borough Council employee, chosen by the employee

10. How much notice am I given of formal meetings?

You will be given a minimum of 7 calendar days notice.

11. What if I cannot attend a capability meeting?

You should notify the Council giving reasons for non attendance. Where your work colleague or trade union representative is unable to attend the meeting you need to let the Council know. In these cases, the meeting should be rescheduled for no later than 7 calendar days after the original date. If you are unable to attend the re arranged meeting it will proceed in your absence. In this circumstance your representative will be afforded the opportunity to present the case on your behalf. Any submission from you in writing will be considered by your Line Manager.

12. What are the possible outcomes of a formal Stage 1 meeting?

- Where discussion identifies that inadequate performance is due to an identifiable or suspected permanent or temporary physical or mental disability, management will refer you to the Occupational Health Advisor to

obtain a professional report on your condition and advice of adjustments the Council could consider to assist you.

- If the Occupational Health Advisor identifies illness, injury or other physical or mental causes for your under performance they will determine if it is of a temporary or permanent nature. Should it be temporary and you agree with this diagnosis your direct Line Manager will devise an action plan designed to support you whilst you are affected by the condition.
- The source of the problem may be identified as unrelated to work (i.e. financial, domestic or relationship issues). In this situation Management will agree an action plan with you for dealing with the problem.
- Where there are no other identifiable issues leading to the poor performance an action plan designed to help you improve will be drafted and agreed in order to support you to improve your performance.

13. What does an action plan include?

Your Line Manager will write to you and confirm the exact terms of the action plan you agree with them. This letter will include:

- Details of the standard to be achieved which may include specific actions
- A realistic timescale for improvement, taking into consideration your personal circumstances and capability
- The provision of training and supervision to assist your improvement
- Regular meetings with you and your Line Manager (at least weekly) to discuss and formally document your progress.
- Consequences of failure to improve.

14. What happens if I see Occupational Health but disagree with their report?

You will be given the option to undergo an examination by, and obtain a report from, an independent and appropriately qualified medical examiner. You will be responsible for the cost of this. Any report must be provided in full to the Council.

15. What happens at the end of the timescale agreed in my action plan?

You will be invited to attend a review interview. This will be held in a timely manner at the conclusion of the timescale agreed in your action plan. You will be given 7 calendar days notice of this meeting and informed of your right to be accompanied by a trade union representative from trade unions recognised by Boston Borough Council, or a fellow Boston Borough Council employee.

16. What are the possible outcomes of a review interview at Stage 2 of the procedure?

- You have made a satisfactory improvement. Your line manager will discuss the action plan with you, and confirm that you have achieved the targets set in the action plan, and gained the required level of capability. Thereafter it is your responsibility to maintain an acceptable level of performance without the need for close supervision or personal action plans beyond the scope of the 'my performance' process. Should your performance deteriorate within the following 12 months a further period of review will not be considered and a Stage 3 meeting will be arranged.
- You have not achieved the standards set out in your action plan. This will be discussed with you, ensuring you are aware of the area(s) still requiring improvement. Where improvement is genuinely beyond your ability, and the above procedure has been followed, the Chief Officer and People Services designated advisor will be informed by your line manager. They will progress the matter to Stage 3 of the procedure.
- The timescale set in the action plan may be extended. This will only be an option where there is sufficient improvement to indicate that there is a realistic prospect of achieving a satisfactory outcome. Where this is the case a second review period will be agreed with you. Only one extension will be permitted and your line manager will agree the length of this with you. No extension will exceed 3 months unless there are exceptional circumstances which have been discussed and agreed with the People & Performance Manager. A further review interview, under Stage 2 of the procedure, will be held in a timely manner at the conclusion of the agreed timescale.

17. Does the Council write to me?

Yes. All invitations to formal meetings will be confirmed in writing. The outcomes of all formal meetings under this procedure will also be confirmed in writing to you within 7 calendar days.

18. Who can attend a Stage 3 meeting?

- The Line Manager
- People Services Advisor
- A member of SMF or CMB
- The employee concerned
- A trade union representative from trade unions recognised by Boston Borough Council, or a fellow Boston Borough Council employee, chosen by the employee

19. What are the possible outcomes of a formal stage 3 meeting?

- The option of redeployment will be considered by the meeting where appropriate. This is not a requirement and is entirely dependent on the merits of your individual case and vacancies available.
- Where it is clear that you are unable to achieve the required standards, and where there is no possibility of redeployment, dismissal will be considered as a last resort.

20. Can I be redeployed to a position/grade where capability would not be an issue?

If it is agreed that redeployment to another position within the council is a possible option, your Line Manager will be responsible for investigating these possible post(s) and liaising with the relevant manager(s) in an effort to accommodate this option. Where redeployment is to a post of a lower grade, then it will not attract salary protection, and will be subject to the terms and conditions of that post.

21. When will I know if I will be redeployed?

If redeployment to another position within the Council can be accommodated People Services will confirm this in writing. Your current line manager will be responsible for implementing the change as soon as possible. In cases where redeployment is not an option, or there are no suitable vacancies you will be dismissed on the grounds of capability with appropriate notice. You will be advised in writing of this decision within 7 calendar days of the Stage 3 meeting.

22. Can I appeal against decisions made?

Rights of appeal against any decision made with regards to this policy can be made in accordance with the Appeals procedure (HR 006).

23. What will you pay me if I am dismissed?

Any payment will be made in line with current legislation and contractual agreements.

24. Who does this policy apply to?

This policy and procedure applies to all Boston Borough Council employees.

This policy has been agreed by Boston Borough Council and the Trade Unions representative for the workforce.

Signed:

Date: 8 October 2008

M Gallagher, Chief Executive

Signed:

Date: 8 October 2008

John Etherington, UNISON representative

Signed:

Date: 8 October 2008

Bridget Garrard, GMB representative