



## **CAPABILITY POLICY**

<b>Title</b>	CAPABILITY POLICY
<b>Who should use this</b>	All Staff
<b>Author</b>	SAC/Adapted by Head of Valuation Services & Assistant ERO
<b>Approved by Management Team</b>	15 <sup>th</sup> March 2016
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<b>Reviewer</b>	<b>PA &amp; Office Manager</b>
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### Review History

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2	Reviewed in September 2016 but no changes	SEPTEMBER 2016
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## **1. Introduction**

- 1.1 Ayrshire Valuation Joint Board is committed to achieving high quality performance standards and will endeavour to ensure that every employee is supported to achieve core competencies and to undertake the duties of their post to a satisfactory level.
- 1.2 This policy sets out how the Board will deal with capability issues in a fair and consistent way. An employee whose performance does not meet acceptable standards of competence will be advised at the earliest opportunity of the standards expected and given appropriate support, advice, encouragement or training to meet these standards.

## **2. Scope**

- 2.1 This policy has been developed jointly with Trades Unions in line with the principles of partnership working and applies to all Local Government Employees.

## **3. Legislation**

- 3.1 This policy complies with the Employment Rights Act 1996 (as amended) and the Equality Act 2010, and has been developed in line with the ACAS Code of Practice 1 – Disciplinary and Grievance Procedures.

## **4. Definitions**

- 4.1 Capability is assessed by reference to the skill, aptitude and knowledge of the employee in relation to the job they are employed to do. This policy is designed to provide an environment in which poor performance resulting from a lack of ability or skill can be constructively addressed.
- 4.2 Where poor performance is the result of an unwillingness to properly carry out the duties of a post or to comply with reasonable instructions (rather than an inability to do so), the matter will be deemed to be one of conduct and dealt with through the Board's Disciplinary Policy.
- 4.3 Where poor performance is due to ill health, a medical condition, or drug/ alcohol dependency, the matter will be deemed to be one of capability, but will be dealt with through the Board's Maximising Attendance Policy or Supporting Employees Managing Addiction Policy. Please also refer to section 10 below for further information.
- 4.4 Where the circumstances of a situation suggest a combination of factors such as conduct and capability, the principle reason for action should be identified and the appropriate policy used. The use of this policy does not preclude the use of another policy if, and when, that becomes more appropriate.

## **5. Key Principles**

- 5.1 The key principles are:

- ***Clear Performance Standards***

Managers have responsibility for:

- the selection and induction of new employees;
- ensuring that clear job remits are established; and
- ensuring that all employees are aware of their role, duties, and responsibilities and the required standards of performance and behaviour; their personal objectives and development requirements should be clarified through the PDR process.

All employees are required to comply with the Board's Code of Conduct for Employees.

- ***Support***

Employees have a contractual responsibility to maintain a satisfactory level of performance and will receive appropriate support to enable standards and targets to be met. Managers have a clear responsibility to assist employees to meet standards of performance, ensuring that employees undertake core training and development to help them in their job.

- ***Supervision***

Outwith the formal PDR process, line managers should have regular discussions, provide supervision and hold one-to-one meetings with employees. Through this process the employee should be advised of any concerns about performance at the earliest opportunity.

- ***Managing Improvement***

Managers will always seek to resolve issues informally, encouraging improvement in a structured way. This will include setting performance goals and standards and providing feedback on the areas of performance that are deemed to be unsatisfactory or causing concern and considering any mitigating circumstances that may be relevant. Such reasonable performance management action does not constitute discrimination, bullying or harassment.

Formal action will only be appropriate where the initial informal approach has not led to the necessary improvement in performance.

- ***Equalities***

The Board's Equality at Work Policy will be observed in relation to all capability related procedures with reasonable adjustments being made where practicable.

## **6. Codes of Professional Ethics and Qualifications/ Professional Registration**

6.1 Employees in posts which are required to adhere to a code of professional standards, performance, conduct or ethics, or to attain and maintain a professional

qualification or registration must comply with these requirements at all times. An employee in such a post who fails to maintain a professional qualification or who loses registration (including suspension of registration) will have the matter considered automatically at Stage 3 of this procedure.

- 6.2 Where appropriate, the Board will comply with the notification requirements or standards of relevant professional bodies, for example, advising RICS and AEA of a dismissal or serious breach of the Board's Code of Conduct.

## **7. Application of the Procedure**

- 7.1 The Board reserves the right to implement the procedure at any stage set out below, taking into account the relevant circumstances including the level of poor or under performance, the nature of the role, the performance issues in question and the informal support that has been provided.

- 7.2 At any stage during the formal or informal procedure, either the manager or the employee may raise the possibility of the employee moving to a different post, either at the same or a lower grade, which is more commensurate with the employee's qualifications, knowledge, skills or abilities. This will obviously be dependent upon a post being available. Such a move will also be dependent upon the employee agreeing to the associated contractual changes and will be implemented in accordance with the Board's Managing Workforce Change Policy.

- 7.3 Where an employee's poor or under performance is being dealt with under any of the Formal stages of this policy, a manager may withhold an increment until performance is at a satisfactory level. In such circumstances, at the point when performance improves to the necessary standard, the increment will be paid and, thereafter, providing performance remains at a satisfactory level, normal incremental progression will apply. An employee will have the right to appeal against the decision to withhold an increment and any such appeal will be considered by the Board's Appeals' Panel. Details of the Appeals procedure are at Section 9.2.3.

- 7.4 The capability procedure contains the following stages:

- Informal Stage
- Formal Stage 1                      Capability Meeting
- Formal Stage 2                      Capability Meeting
- Formal Stage 3                      Capability Hearing (at this stage the employee may be dismissed)

### **7.5 Informal Stage**

- (1) Where a manager becomes concerned about an employee's performance, he/she will informally, and on a one-to-one basis, raise these concerns with the employee at the earliest opportunity. It is hoped that most poor performance issues will be resolved at this stage.

Specifically the informal stage will seek to:

- confirm the performance gap;
- identify the causes (see Section 7.5 (2) below);
- outline the impact of the poor performance;
- decide the appropriate and necessary action to be taken;
- clarify who has responsibility for these actions;
- outline the performance standards that are required;
- explain the support the employee will be given;
- set out a Performance Improvement Plan, which includes the timetable for the required improvement.

The manager will provide specific examples of the poor or under-performance and should identify and discuss any underlying issues which may be impacting on the employee's performance.

- (2) Where it is understood that disability is impacting on an employee's performance, reasonable adjustments where practicable will be made. Guidance is available from the Board's HR Representatives or from South Ayrshire Council Occupational Health Service.

(3) ***Performance Improvement Plan***

The manager should agree a Performance Improvement Plan with the employee, which should consist of:

- a clear statement of the standards to be achieved;
- a realistic time scale for this improvement;
- details of any support or training to be provided;
- provision for regular monitoring meetings; and
- details of how performance will be measured.

The manager will confirm the review period, normally between 4 to 12 weeks, however the actual period will be determined by the circumstances, and so may be longer.

The employee will receive written confirmation of the outcome of the informal stage, including the Performance Improvement Plan, plus clarification that if he/she fails to make the necessary improvement or achieve the required standard of performance, the formal process will be initiated.

(4) ***Review Period***

As noted above, in normal circumstances there will be a review, normally after 4 to 12 weeks, although the actual period may be longer depending on the circumstances. During the review period, performance will be monitored and feedback provided through regular one-to-one meetings. These meetings will be recorded in writing and written confirmation of the

discussion and action points issued to the employee. At the end of the review period, the manager will confirm the outcome of the informal stage. This will include but not be limited to the following outcomes:

- performance has improved and no further action will be taken if improvement is maintained;
- confirmation that while improvements have been evidenced, the overall required standards of performance have not yet been achieved and therefore the review period will be extended; and
- a decision that improvement has not been adequate and the required standards have not been achieved and, accordingly, that the matter will progress to Stage 1 of the formal process.

## 7.6 **Stage 1 – Formal Capability Meeting**

(1) If, despite informal support and assistance, the employee's performance does not meet the required standards, the manager will write to the employee detailing the concerns and arranging a meeting under Stage 1 of the formal process. The employee will be given 7 days' notice of the meeting and informed of his/her right to be accompanied by a trade union representative or work colleague (see section 8 below for more detail). At the Stage 1 meeting the manager will:

- provide clear examples of shortfall in performance;
- confirm and discuss the support/training etc. that has already been given to help the employee achieve the required standards;
- explain what improvements are required;
- set out a Performance Improvement Plan;
- outline the required timescales for improvement, which is likely to be between 4 and 12 weeks;
- outline any additional support to assist the employee;
- explain that failure to meet the required standards within the specified timescales will result in escalation to Stage 2 of the process; and
- ensure the employee, and/or representative, is given the opportunity to respond to and explain any underlying issues affecting performance.

The manager will send written confirmation of the outcome of the meeting to the employee within 7 days of the meeting, which will include details of the required actions, timescales for improvement and the right of appeal.

### (2) **Review Period**

In normal circumstances there will be a review, normally after 4 to 12 weeks, however the actual period will be determined by the circumstances, and so may be longer. During the review period performance will be monitored and feedback provided through regular one-to-one meetings. These meetings will be recorded in writing and written confirmation of the discussion and action points issued to the employee. At the end of the review period the

manager will confirm the outcome of Stage 1 in writing. This will include, but not be limited to, the following outcomes:

- performance has improved and no further action will be taken if improvement is maintained;
- confirmation that while key/significant improvements have been evidenced, the overall required standards of performance have not yet been achieved and therefore the review period will be extended; and
- confirmation that there has been no, or only slight, improvement and therefore the matter will progress to Stage 2 of the formal process.

## 7.7 Stage 2 – Formal Capability Meeting

(1) If at the end of Stage 1 the employee's performance does not meet the required standard, the manager will write to the employee advising of the position and arranging a Stage 2 meeting. The employee will be given 7 days' notice of the meeting and informed of his/her right to be accompanied by a trade union representative or work colleague. At the Stage 2 meeting the manager will:

- explain the meeting is being held under Stage 2 of the Capability Procedure;
- provide clear examples of the shortfall in performance;
- confirm and discuss the support/training, etc, that has already been given to help the employee achieve the required standards;
- reiterate the standard of performance required of the employee with timescales;
- update the Performance Improvement Plan;
- confirm how performance will be monitored during the final monitoring period;
- outline any additional support or training to assist the employee;
- reiterate that failure to reach the required standards within the specified timescales will result in dismissal; and
- ensure the employee and/or representative is given the opportunity to respond to and explain any underlying issues affecting performance.

The manager will send written confirmation of the outcome of the meeting to the employee within 7 days of the meeting, which will include details of the required actions, timescales for improvement and the right of appeal.

### (2) **Review Period**

In normal circumstances, there will be a review, normally after 4 to 12 weeks, however the actual period will be determined by the circumstances, and so may be longer. During the review period, performance will be monitored and feedback provided through regular one-to-one meetings.



These meetings will be recorded in writing and written confirmation of the discussion and action points issued to the employee. At the end of the review period, the manager will confirm the outcome of Stage 2 in writing. This will include, but not be limited to, the following outcomes:

- performance has improved and no further action will be taken if improvement is maintained;
- confirmation that while key/significant improvements have been evidenced, the overall required standards of performance have not yet been achieved and therefore the review period will be extended; and
- confirmation that there has been no, or only slight, improvement and therefore the matter will progress to Stage 3 of the formal process.

## 7.8 **Stage 3 – Final Capability Meeting**

(1) If either:

- at the end of Stage 2, the employee's performance does not meet the required standards; or
- the employee has failed to adhere to a code of professional standards, performance, conduct or ethics, or attain or maintain a professional qualification or registration (as outlined at section 6.1 above)

the manager will write to the employee advising of the position and arranging the final Stage 3 meeting, which will be chaired by a manager who is at a more senior level than the manager(s) involved in the earlier stages and who has not previously been involved in the case.

The employee will be given at least 7 days' notice of the meeting, advised of the right to be accompanied by a trade union representative or work colleague, and informed that the outcome of the meeting may be termination of employment.

In advance of the meeting, the manager who will chair the meeting will contact the Head of Valuation Services & Assistant ERO who will arrange a meeting with South Ayrshire Council.

(2) ***Outcomes of Stage 3 Meeting***

At the end of the Stage 3 meeting, the Chair of the meeting will advise the employee of the outcome which will include, but not be limited to, the following outcomes:

- further explore the option of suitable alternative employment (as outlined at Section 7.2 above) in accordance with the Board's Managing Workforce Change Policy, but, if no alternative employment is available, either:
  - (i) in exceptional circumstances, the Stage 2 review period will be extended and a further final review meeting arranged; or

- (ii) the employee will be advised that he/she will be given notice of termination of employment on the grounds of capability. During the notice period, in accordance with the Board's Managing Workforce Change Policy, further efforts will be made to identify suitable alternative employment.

The manager will send written confirmation of the outcome of the meeting to the employee within 7 days of the meeting, which will include details of the right of appeal.

## **8. Right to be Accompanied**

8.1 At the formal stages of this procedure, including an appeal, the employee has the right to be accompanied by a trade union representative or workplace colleague. The representative or colleague may, with the employee's permission:

- address the hearing to put forward the employee's case;
- ask questions on behalf of the employee;
- sum up the case;
- respond on the employee's behalf to views expressed at the meeting; and
- confer with the employee during the meeting.

However, the representative or colleague will not have the right to answer questions on the employee's behalf.

## **9. Complaints/ Right of Appeal**

### **9.1 *Informal Stage***

At the informal stage of this procedure, an employee who wishes to raise a complaint, may submit their case in writing to the Head of Valuation Services & Assistant ERO or other nominated senior officer within 14 days of the date on which the meeting to discuss the employees performance was held. The Head of Valuation Services & Assistant ERO, or other nominated senior officer, will carry out a brief review and notify the employee of the outcome of the review within 7 days of the review being completed. The process will end at that point and there is no right to appeal the outcome of the review.

### **9.2 *Formal Stages***

An employee has the right to appeal at **formal** Stages 1, 2 and 3. An employee who chooses to exercise the right of appeal must submit the details of the appeal in writing to the Head of Valuation Services & Assistant ERO or other nominated senior officer within 14 days of receipt of the letter notifying the employee of the outcome of the Stage 1, 2 or 3 meeting.

When lodging an appeal, the employee must state the grounds and reasons for the appeal, which will normally be based on one or both of the following grounds:

- procedural flaw/fairness of penalty; and
- new evidence has arisen which was not considered at the original meeting which may have a bearing on the outcome.

(1) **Stages 1 and 2**

The Head of Valuation Services & Assistant ERO will hear the appeal, or arrange for another appropriate officer to hear the appeal. The employee will be given 7 days' notice in writing of the time and venue of the appeal hearing and the name of the Officer who will hear the appeal. The outcome of the hearing will be to uphold, revoke or vary the original decision. Written confirmation of the decision will be sent to the employee within 7 days of the appeal hearing. There will be no further right of appeal at this stage of the procedure.

(2) **Stage 3**

Where an employee is issued with notice of dismissal at Stage 3, the appeal should be forwarded to the Assessor & ERO who will arrange for the appeal to be heard by the Board's Appeals Panel. The decision of the Board's Appeals Panel will be final.

(3) **Withholding an Increment**

An employee will have the right to appeal against the decision to withhold an increment. In such circumstances the employee should submit the appeal in writing to the Head of Valuation Services & Assistant ERO or other nominated senior officer within 14 days of receipt of the letter notifying the employee of the decision. The Head of Valuation Services & Assistant ERO or other nominated senior officer will forward the appeal to the Assessor & ERO who will arrange for the appeal to be heard by the Board's Appeals Panel. The decision of the Board's Appeals Panel will be final.

**10. General**

**10.1 *Non-Attendance at a Capability Meeting***

Employees are required to attend meetings arranged under this policy and failure to do so, without good reason, may be deemed to be misconduct and dealt with accordingly. If the employee or his/her representative is unable to attend a meeting because of illness or other substantial and valid reason, the meeting may be postponed and rearranged, where possible, for a date within 7 days of the original meeting date.

If the employee is unable to attend this re-arranged meeting, in most circumstances the meeting will be held in the employee's absence. However, employees will have the option of requesting that his/her representative or work colleague present the case in his/her absence.

**10.2 *Capability Related to a Disability***

In circumstances where an employee believes his/her health or disability is affecting performance he/she should raise the matter with their manager. Additional support or advice will be obtained as appropriate. This will ensure the manager is aware of the problem and has the opportunity to consider any reasonable adjustments that are available.

### 10.3 ***Capability Related to Alcohol/ Drug Dependency***

The Board's Supporting Employees Managing Addiction Policy outlines the arrangements which will be made in such circumstances.

In circumstances where the poor or under performance may be linked to, or caused by, an addiction the manager can, if appropriate, decide to hold any formal action in abeyance pending the employee's satisfactory referral under the Addiction Programme.

However, in certain circumstances, and following a risk assessment, it may be necessary to temporarily redeploy the employee concerned.

At the earliest opportunity once concerns about performance are identified, the manager should:

- Provide clear examples of shortfall in performance;
- Detail and discuss any support, training etc. that has already been given to the employee;
- Explain what improvements are required;
- Set out a Performance Improvement Plan; and
- Outline the timescales at which performance will be reviewed.

In the period during which formal action is being held in abeyance, the manager will monitor performance and provide feedback through regular one to one meetings.

### 10.4 ***Capability Related to Ill Health***

The Board's Maximising Attendance Policy should be referred to where an employee's poor or under performance is the result of ill health. Where there is medical evidence, verified by South Ayrshire Council's Occupational Health Service, that the employee is not physically or mentally capable of undertaking the duties of his/her post, it may be possible to explore the possibility of redeployment, which will be dealt with through the Board's Maximising Attendance Policy or Managing Workforce Change Policy.

### 10.5 ***Trade Union Representatives***

Normally, no action in terms of these procedures will be taken against a trade union representative until the matter has been discussed with a full time official of the union concerned.

### 10.6 ***Action in Serious Cases***

Where an employee commits a single error and the actual or potential consequences of that error are, or could be, extremely serious which may be considered as Gross Misconduct e.g., serious breach of health and safety, the matter would be dealt with by reference to the Board's Disciplinary Policy.

## **11. Monitoring and Review**

- 11.1 This policy will be reviewed in line with employment legislation and employment practice. Any amendments to the policy will be implemented after full consultation with the Trades Unions.