

# CAPABILITY PROCEDURE

This document applies to all Council employees except:

- All school based employees

*This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.*

<b>Last Review</b>	July 2017
<b>Next Scheduled Review</b>	
<b>Last Updated</b>	September 2020

## Temporary Changes to Policies During Covid 19

There are temporary changes to employment policies during the coronavirus pandemic Please refer to the FAQ's/guidance on George which refer to :-

- Arranging meetings remotely

Where policies refer to meetings/hearings these will generally be conducted via video conference, however, in some circumstances face to face meetings may be appropriate, or hybrids of both face to face and video conference. Please see guidance on George

Please contact HR if you have any queries on the above

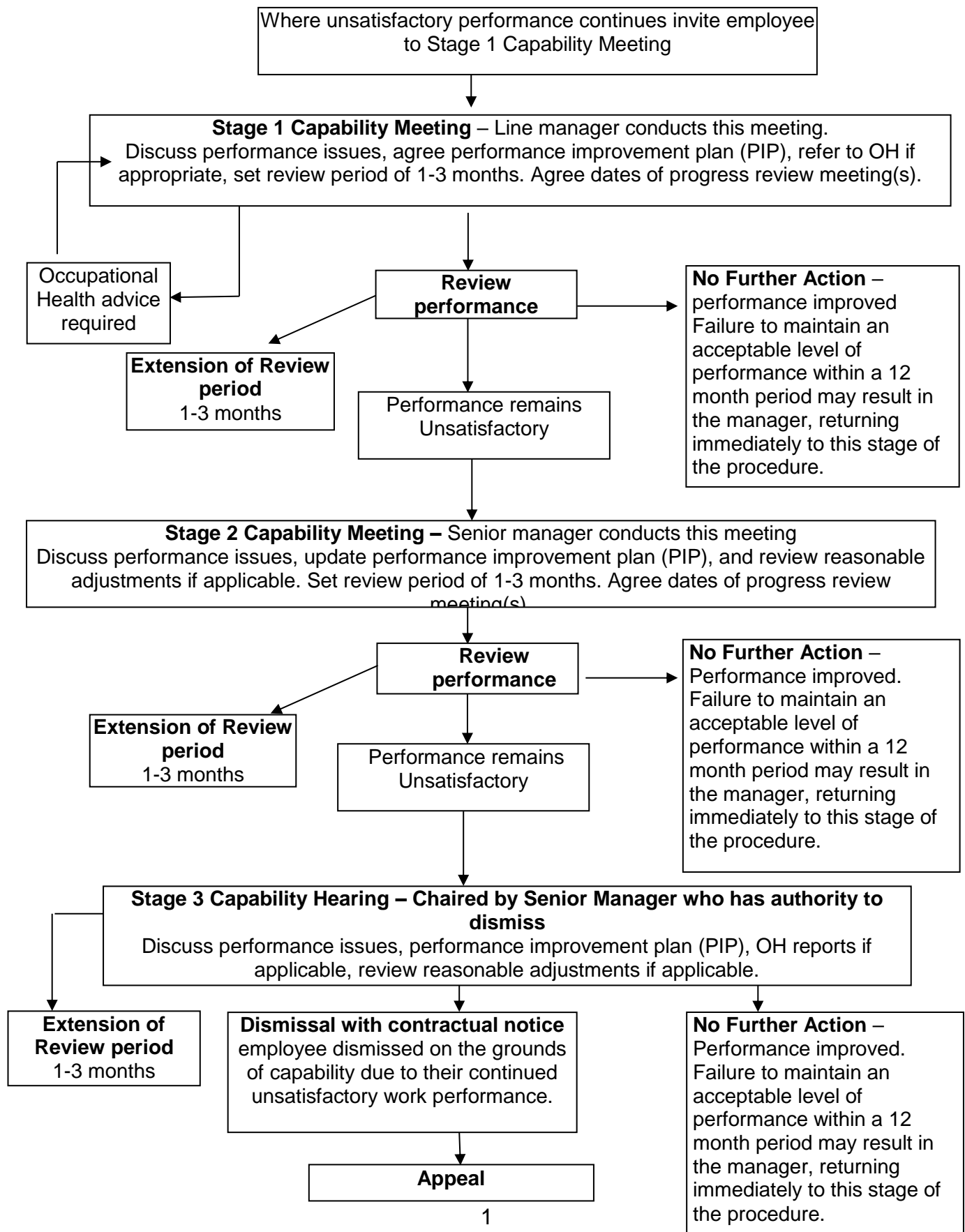
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# CAPABILITY PROCEDURE FLOWCHART

Unsatisfactory performance concerns raised with employee during 1:1/supervisions/performance and development appraisals. If employee fails to meet and maintain required levels then progress to Stage 1 Capability Meeting



## **CAPABILITY PROCEDURE**

Initial identification of an employee's failure to meet and maintain the required levels of performance often arises through normal performance management meetings i.e. one-to-ones, supervision meetings, performance and development appraisals.

It is expected that the majority of performance related issues will be resolved promptly at this day to day, operational level.

However, where it becomes apparent to the manager that this approach has proved ineffective in resolving the issues of concern the manager should invite the employee to attend a Stage 1 Capability Meeting.

This procedure will also be applied in cases where an informal development plan, previously agreed to address performance related issues and performance against objectives as part of the Performance and Development Appraisal Policy, does not achieve an improvement.

The discussion in that meeting should alert the employee to the concerns and give the manager the opportunity to assess the situation on the basis of the information provided.

During the capability process the manager will provide the necessary advice, coaching, guidance and support in addition to developing and agreeing with the employee a series of [Performance Improvement Plan](#) in order to support the individual in attaining and maintaining the required standards of performance.

Progress made by the employee against the Performance Improvement Plan will be reviewed by the manager on a regular basis. The outcome of these progress review meetings will determine whether it is necessary to move to the next stage of the process i.e. Stage 2 Capability Meeting **or** Stage 3 Capability Hearing.

Improvements in performance must be maintained to an acceptable level. Failure to maintain these improvements within a 12 month period may result in the manager returning immediately to the same stage of the procedure.

### **Withholding pay progression increments**

In accordance with the [Green Book Employees Pay and Conditions Policy](#), the manager, with advice from the HR Adviser, has discretion to withhold a pay progression increment as part of any formal action taken against the employee under the terms of the Capability Policy and Procedure or Disciplinary Policy and Procedure.

If the employee's performance becomes satisfactory and is maintained, i.e. a Performance and Development Appraisal rating of 3 or above, the pay progression increment will be paid in the next financial year, but this will not be backdated.

Separate arrangements apply for withholding a pay progression increment under the Performance and Development Appraisal Policy and Procedure.

## **STAGE 1 CAPABILITY MEETING**

Where performance related issues are not resolved at the day to day, operational level and the employee continues to fail to meet and maintain the required levels of

performance the manager should invite the employee to attend a Stage 1 Capability Meeting.

### **Preparation before the Stage 1 Capability Meeting**

Manager invites employee to the Stage1 Capability Meeting to discuss the concerns over poor performance, giving at least **5 working days'** notice ([Template Letter 1](#)).

The employee is advised that they have the right to be accompanied by a Lincolnshire County Council work colleague, recognised Trade Union Representative or recognised Trade Union Officer.

The manager's approach should be one of constructive support, guidance, coaching and encouragement.

Manager collates any necessary information, where appropriate; to demonstrate to the employee where they are not meeting and maintaining the required standards of performance, e.g. job description/person specification, any OH reports, competencies, supervision notes, performance and development appraisals, case files, screen prints of data systems, call recordings etc. Manager may decide an OH referral is carried out prior to the Stage 1 Capability Meeting.

Following 1:1/supervisions/performance and development appraisals where performance concerns have been discussed the manager may choose to draft the Performance Improvement Plan prior to the Stage 1 Capability Meeting.

### **During the Stage 1 Capability Meeting**

The discussion should include the following:

- the manager will present the evidence of the performance issue(s) to the employee and express their concerns
- the employee will be given a full opportunity to respond and explain any factors affecting their current performance levels. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health. An adjournment may take place should an OH referral be required.
- the manager will give thorough consideration to all the responses made by the employee
- If an Occupational Health report has been received, the manager will consider any reasonable adjustments as advised in the report. Refer to [Reasonable Adjustment Request Form](#). Any such adjustments need to be reviewed on a regular basis to assess the effectiveness see [Supporting Disabled Employees in the Workplace](#)
- the manager should make the employee aware of the confidential [Employee Support and Counselling Service](#).

### **Outcome of the Stage 1 Capability Meeting**

The outcome of the Stage 1 Capability Meeting will be confirmed in writing to the employee including the possible outcome if their performance fails to improve and be maintained to an acceptable standard. ([Template Letter 2](#)).

The line manager will decide which of the following outcomes will be appropriate for the case:

- it is not necessary to take any further action under the Stage 1 of the Capability Procedure. The manager and employee can agree any actions and review as appropriate. Failure to maintain an acceptable level of performance within a 12 month period may result in the manager, with advice from the HR Adviser, returning immediately to this stage of the procedure.
- confirm with the employee that their work performance will be monitored under the Stage 1 of the Capability Policy and Procedure and they should be given a copy of this document. **The manager will set a review period of between 1 and 3 months.**
- the employee should be made aware that if their performance does not improve, they will be invited to a Stage 2 Capability Meeting, and if after Stage 2 there is still no or little improvement in performance, a Stage 3 Capability Hearing will be arranged and a possible outcome of this could be dismissal.
- develop and agree a Performance Improvement Plan (PIP) with the employee, with specific targets and dates. Reference should be made to the Core Values and Behaviours Framework, job description and other relevant performance criteria as appropriate. Where applicable the PIP should include any reasonable adjustments as recommended by OH. See below for guidance on employees with medical conditions.
- advise how they will assist the employee to meet and maintain the required levels of improvement, any further training and support that is required and can be provided.
- advise that should the employee's performance cause significant concern and it is clear they will not meet the performance improvement plan before the end of the review period then the manager has the discretion to bring the review period forward.
- advise of the frequency of progress review meetings to monitor improvement (this will depend on the length of the review period but at least one progress review meeting per month)
- consideration of withholding a pay progression increment until level of performance has reached the required standards. If the pay progression increment is due to be paid within the set review period the manager should liaise with payroll to request that the pay progression increment is withheld.
- manager may consider alternative employment but only where a suitable vacancy exists. Normal recruitment and selection processes will apply *NB – Please note that this option is not part of the Redeployment Policy and At Risk status will not apply.*

Should an underlying medical condition(s) be identified and confirmed as having an impact upon the employee's performance, an Occupational Health referral will be carried out. Management will aim to support the employee with any reasonable adjustments as recommended by Occupational Health.

Where an employee declines a referral to Occupational Health, the manager should explain that without such a report management decisions will be made using the information available.

If reasonable adjustments cannot be accommodated or do not assist the employee to fulfil their responsibilities, alternative reasonable adjustments may need to be considered or medical redeployment may be explored with Occupational Health Advice. In such cases managers must follow the Redeployment Policy and Procedure.

If an employee is suffering with stress-related illness, anxiety or depression, as determined on the Fit Note, it is essential that support is provided, (See guidance in the Stress Checklist and [G22 Appendix 1 Model Employee Mental-Health Risk Assessment](#)). If work-related issues are felt to be contributing to ill health, managers must discuss these with a HR Adviser so appropriate and reasonable action(s) can be taken swiftly.

Managers have a duty of care to employees to take reasonable steps to avoid putting them in situations that might impair their health (See the Stress Checklist for Managers for advice with absences relating to mental health).

### **Support during Stage 1 Capability Review period**

Progress review meetings should take place during the agreed review period to monitor improvement, which should be documented in the 'Progress Review Meetings' column of the Performance Improvement Plan. Both the manager and employee should provide input to this. Any targets that need amending should also be made on the Performance Improvement Plan.

Regular feedback should also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc.) but a written record should be kept.

### **Stage 1 Capability Review Outcomes**

At the end of the agreed monitoring period (1-3 months) the manager will meet with the employee to discuss the progress made and inform them of the outcome of the review period. The manager should then confirm the outcome to the employee in writing:

#### **No further action**

The employee has now reached, or is shortly expected to reach the required levels of performance and the review period has ended. ([Template Letter 3](#)). Failure to maintain an acceptable level of performance within a 12 month period may result in the manager, with advice from the HR Adviser, returning immediately to this stage of the procedure.

Any pay progression increments previously withheld under the terms of the Capability Policy and Procedure may subsequently be paid if the employee's performance becomes satisfactory.

The Manager will need to consider this with advice from the HR Adviser before emailing [CorporateHRAdminSupp@lincolnshire.gov.uk](mailto:CorporateHRAdminSupp@lincolnshire.gov.uk) to advise of this.

### **Extension of Review period**

The employee has made some improvements, but their performance is still below acceptable standards. A further review period of 1 to 3 months will be required ([Template Letter 3](#)). Should the employee fail to have made or maintained satisfactory progress at the end of this extended review period, the progress review meeting will be convened. The Manager may consider with advice from the HR Adviser to withhold a pay progression increment if this was not already applied during the Stage 1 Meeting.



## **Performance remains Unsatisfactory**

Where the employee's performance remains below expected standards during the review period, a Stage 2 Capability Meeting will be arranged ([Template Letter 3](#)). The Manager may consider with advice from the HR Adviser to withhold a pay progression increment if this was not already applied during the Stage 1 Meeting.

Where performance levels remain unsatisfactory following the Stage 1, or where improvements in performance are not being maintained to the required standard within 12 months of the Stage 1, the employee's capabilities should be reviewed and consideration should be made as to whether the matter should be progressed to the Stage 2 Capability Meeting.

Managers should seek advice from the relevant HR Adviser before progressing.

## **STAGE 2 CAPABILITY MEETING**

The Stage 2 Capability Meeting should be held with the employee's line manager and senior manager. The senior manager will be Chair of the meeting.

### **Preparation before the Stage 2 Capability Meeting**

Manager invites employee to the Stage 2 Capability Meeting to discuss the continuing concerns over poor performance, giving at least **5 working days'** notice ([Template Letter 4](#)). The employee will be provided with a copy of the Stage 1 letters, Performance Improvement Plan, any OH reports, and the notes of progress review meetings.

The employee is advised that they have the right to be accompanied by a Lincolnshire County Council work colleague or recognised Trade Union Representative or recognised Trade Union Officer.

The HR Adviser may be in attendance to provide support to the Chair of the meeting.

### **During the Stage 2 Capability Meeting**

The discussion should include the following:

- the manager will present the evidence of the performance issue(s) to the employee and express their concerns
- the employee will be given a full opportunity to respond and explain any factors affecting their current performance levels. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health
- the manager will review the monitoring period and discuss the employee's performance including where appropriate, addressing any reasonable adjustments from the Occupational Health report. Refer to [Reasonable Adjustment Request Form](#). Any such adjustments need to be reviewed on a regular basis to assess the effectiveness [Supporting Disabled Employees in the Workplace](#)
- The manager should make the employee aware of the confidential Employee Support and Counselling service.

## Outcome of the Stage 2 Capability Meeting

The outcome of the Stage 2 Capability Meeting will be confirmed in writing to the employee ([Template Letter 5](#)). A copy of the Performance Improvement Plan will also need to be enclosed with the letter.

The senior manager will decide which of the following outcomes will be appropriate for the case;

- it is not necessary to take any further action under the Stage 2 of the Capability Procedure. The manager and employee can agree any actions and review as appropriate. Failure to maintain an acceptable level of performance within a 12 month period may result in the manager, with advice from the HR Adviser, returning immediately to this stage of the procedure.
- confirm with the employee that their work performance will be monitored under the Stage 2 of the Capability Policy and Procedure and they should be given a copy of this document. **The manager will set a review period of between 1 and 3 months.**
- the employee should be made aware that if their performance does not improve, they will be invited to a Stage 3 Capability Hearing and a possible outcome of this could be dismissal.
- review and agree the Performance Improvement Plan (PIP) with the employee, with specific targets and dates. Reference should be made to the Core Values and Behaviours Framework, job description and other relevant performance criteria as appropriate. Where applicable the PIP should include any reasonable adjustments as recommended by OH.
- advise how they will assist the employee to meet and maintain the required levels of improvement, any further training and support that is required and can be provided.
- advise that should the employee's performance cause significant concern and it is clear they will not meet the performance improvement plan before the end of the review period then the manager has the discretion to bring the review period forward.
- advise of the frequency of progress review meetings to monitor improvement (this will depend on the length of the review period but at least one progress review meeting per month)
- consideration of withholding a pay progression increment until level of performance has reached the required standards. If the pay progression increment is due to be paid within the set review period the manager should liaise with payroll to request the pay progression increment is withheld.
- the employee should be forewarned that should their level of performance not be improved and maintained by the end of the review period this may result in progressing to Stage 3 Capability Hearing.
- Manager may consider alternative employment but only where a suitable vacancy exists. Normal recruitment and selection processes will apply *NB – Please note that this option is not part of the Redeployment Policy and At Risk status will not apply.*

## Support during Stage 2 Capability Review Period

Progress review meetings should take place during the agreed monitoring period to review improvement, which should be documented in the 'Progress Review Meetings' column of the Performance Improvement Plan. Both the manager and employee should provide input to this. Any targets or additional concerns that need

amending during this period should also be made on the Performance Improvement Plan.

Furthermore, regular feedback may also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc.) but a written record should be kept.

## **Stage 2 Capability Review Outcomes**

At the end of the agreed review period (1-3 months) the employee's manager and the senior manager who chaired the previous meeting will meet with the employee again to discuss their progress in achieving and maintaining the required levels of performance and inform them of the outcome of the review period. The possible outcomes are:

### **No further action**

The employee has now reached, or is shortly expected to reach, the required levels of performance and the review period has ended. No further action will be taken provided that acceptable performance levels are maintained. Failure to maintain an acceptable level of performance within a 12 month period may result in the manager, with advice from the HR Adviser, returning immediately to this stage of the procedure. ([Template Letter 6](#)).

Any pay progression increments previously withheld under the terms of the Capability Policy and Procedure may subsequently be paid if the employee's performance becomes satisfactory. The manager will need to consider this with advice from the HR Adviser before emailing [CorporateHRAdminSupp@lincolnshire.gov.uk](mailto:CorporateHRAdminSupp@lincolnshire.gov.uk) to advise of this.

### **Extension of Review Period**

The employee has made some improvements, but their performance is still below acceptable standards. A further review period of 1 to 3 months will be required ([Template Letter 6](#)). Should the employee fail to have made or maintained satisfactory progress at the end of this extended review period, the progress review meeting will be convened. The Manager may consider with advice from the HR Adviser to withhold a pay progression increment if this was not already applied during the Stage 1 or 2 Meeting

### **Performance remains Unsatisfactory**

Where the employee's performance remains below expected standards during the review period a Stage 3 Capability Hearing will be arranged ([Template Letter 6](#)). The Manager may consider with advice from the HR Adviser to withhold a pay progression increment if this was not already applied during the Stage 1 or 2 Meeting.

Where performance levels remain unsatisfactory following the Stage 2, or where improvements in performance are not being maintained to the required standard within 12 months of the Stage 2, the employee's capabilities should be reviewed and consideration should be made as to whether the matter should be progressed to the Stage 3 Capability Hearing.

Managers should seek advice from the relevant HR Adviser before progressing.

## STAGE 3 CAPABILITY HEARING

Following notification from the manager, a Stage 3 Capability Hearing will be arranged. Confirmation of the arrangements will be sent in writing to the employee (with copies to Panel Members and Representative if appropriate), giving at least **10 working days' notice** ([Template Letter 7](#)).

This invite will include records of monitoring/progress to date including a copy of all correspondence from the Stage 1 Capability Meeting and the Stage 2 Capability Meeting, including the Performance Improvement Plan, notes of subsequent progress review meetings, advice from Occupational Health (if appropriate).

The employee's right to be accompanied by a Lincolnshire County Council work colleague, a recognised Trade Union Officer or recognised Trade Union Representative.

### Preparation before the Capability Hearing

Any documentation from the employee should be submitted **5 working days** prior to the hearing including advance notification to the HR Adviser of the number of witnesses (if any) that they plan to call.

The additional information will be distributed to all parties by the HR Adviser **3 working days** prior to the Hearing.

The hearing panel will consist of two senior managers with no prior involvement in the case. One senior manager should have the authority or delegated authority to dismiss; normally from the service area concerned. It may be considered appropriate to select the second senior manager from another service area.

A HR Adviser, also with no prior involvement in the case will also attend, together with a management representative, the employee, and their representative.

As dismissal is a possible outcome of a Stage 3 Capability Hearing, a note taker will be provided by the Chair of the Panel.

Refer to [Appendix 2 Capability Hearing Procedure](#).

### The Decision

The panel members discuss the employee's relevant performance history, all related evidence and any relevant County Council policies, procedures and practices.

The Chairperson and Independent Manager make the final decision on the outcome.

The Chairperson reads out the panel's decision and any related performance improvement plans and/or action plans. Chairperson will bring the hearing to a prompt close, without further discussion or debate.

Immediately after the Hearing, the Chairperson (assisted by the HR Adviser) will prepare a detailed [Appendix 3 Stage 3 Hearing Decision Record](#).

## **Outcomes of Hearing**

### **No further action**

The employee has now reached, or is shortly expected to reach, the required levels of performance and the review period has ended. No further action will be taken provided that acceptable performance levels are maintained. Failure to maintain an acceptable level of performance within a 12 month period may result in the manager, with advice from the HR Adviser, returning immediately to this stage of the procedure. ([Template Letter 8](#)).

Any pay progression increments previously withheld under the Capability Policy and Procedure may subsequently be paid if the employee's performance becomes satisfactory.

The Manager will need to consider this with advice from the HR Adviser before emailing [CorporateHRAdminSupp@lincolnshire.gov.uk](mailto:CorporateHRAdminSupp@lincolnshire.gov.uk) to advise of this.

### **Extension of Review Period**

The employee has made some improvements, but their performance is still below acceptable standards. However, there is evidence that there is a realistic chance of acceptable performance being achieved. A further review period will be set, which other than in exceptional circumstances will not be longer than 3 months. The Chair may consider with advice from the HR Adviser to withhold a pay progression increment if this was not already applied during the Stage 1 or 2 Meeting. ([Template Letter 8](#)).

Should the employee not have made or maintained satisfactory progress at the end of this extended review period, the Capability Hearing will be reconvened with the same panel following the same procedure.

### **Dismissal with contractual notice**

The employee will be dismissed on the grounds of capability due to their continued unsatisfactory work performance. If the employee attended the hearing and notice was given verbally the notice period starts the day after the hearing. If the employee did not attend the hearing the notice period starts 2 days after posting the outcome letter. ([Template Letter 8](#)).

The outcome of the Stage 3 Capability Hearing should be confirmed to the employee in writing by the Chair of the Capability Hearing.

Where an employee is dismissed on the grounds of capability:

- the letter will include their right of appeal and a copy of the Appeals Policy.
- the manager should complete a LCC Leavers Business World On! Form

## **APPEAL**

An employee has the right to submit an appeal against formal sanctions applied under the Capability Policy and Procedure i.e. dismissal on the grounds of capability and/or withholding the pay progression increment by using the [Appeals Policy](#).

The appeal would be heard by Elected Members. If the employee wishes to appeal they must do so in writing, outlining the reasons for this, within **10 working days** of the date on which the decision is confirmed in writing.

Employees who are not awarded a pay progression increment as a result of their Performance and Development Appraisal rating will have the right of appeal as outlined in Section 11 of the Corporate Performance and Development Appraisal Procedure.

## **FURTHER INFORMATION**

The electronic, audio or video recording by any device of meetings/hearings during the capability process will not be permitted.

Should an employee think that there are exceptional circumstances where this should be allowed (for instance, due to a disability) this should be raised in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

## **ADVICE AND SUPPORT**

Please contact Human Resources.

## **ADDITIONAL RELEVANT POLICIES**

[Capability Policy](#)  
[Appeals Policy](#)  
[Appraisal Policy](#)  
[Disciplinary Procedure](#)  
[Green Book Employees Pay and Conditions Policy](#)  
[G26.1 Employees with Disabilities or Ill Health](#)  
[Performance and Development Appraisal Procedure](#)  
[Reasonable Adjustment Request Form](#)  
[Redeployment Policy](#)  
[Supporting Disabled Employees in the Workplace](#)

## **SUPPORT SERVICES**

[Employee Support and Counselling](#)