Version No.	3
Adopted Date:	October 2023
Last Reviewed Date:	October 2024
Next Review Date:	November 2026

CAPABILITY POLICY AND PROCEDURES

1 Introduction

1.1 We recognise that during your employment with the Council your capability to carry out your duties may deteriorate. This can be for a number of reasons, the most common ones being that either the job changes over a period of time and you fail to keep pace with the changes, or you change (most commonly because of health reasons) and you can no longer cope with the work.

1.2 The policy outlines the responsibilities of managers and employees in assessing capability, identifying development needs and supporting continuous professional development. It promotes a culture of learning, accountability and improvement, ensuring that capability is recognised as an ongoing process that supports both individual performance and organisational success.

2 Purpose

2.1 The purpose of this policy is to:

- Establish a clear and consistent approach to managing employee capability across the Council.
- Support employees to achieve and maintain the standards required for their roles.
- Identify capability concerns at an early stage and provide appropriate support and development.
- Ensure employees understand the performance standards and expectations against which they are assessed.
- Provide a transparent process for reviewing performance and monitoring improvement.
- Ensure decisions are evidence-based, reasonable, proportionate and procedurally fair.
- Protect the quality, effectiveness and continuity of Council services.
- Promote equality, inclusion, employee wellbeing and continuous professional development.

3 Scope

3.1 This policy applies to employees directly employed by the Council, subject to any applicable contractual arrangements or specific employment procedures.

The policy should be read alongside the Council's other relevant policies and procedures, including:

- Disciplinary Policy and Procedure.
- Sickness Absence Policy.
- Health and Wellbeing Policy.
- Equality, Diversity and Inclusion Policy.
- Grievance Policy and Procedure.
- Probationary Procedure.
- Relevant professional standards and codes of conduct.

3.2 Agency workers, contractors, elected members and other individuals who are not directly employed by the Council will be managed under the relevant contractual or organisational arrangements.

3.3 Where a separate policy provides a more appropriate process, such as the probationary or ill-health management procedure, the Council will normally use that process.

4 Policy statement

4.1 The Council will ensure that capability concerns are managed fairly, consistently and promptly.

4.2 Employees will be informed of the standards expected of them and will receive appropriate guidance, supervision, training and feedback to support effective performance. The Clerk is responsible for addressing concerns at an early stage and for ensuring that employees are given a reasonable opportunity to improve. The Council will not make assumptions about an employee's capability without considering the available evidence and any relevant circumstances. Decisions will take account of the employee's role, experience, training, resources, workload, working environment and any reasonable adjustments that may be required.

4.3 Formal capability action will only be taken where there is a clear and reasonable basis for doing so. Employees will be informed of the concerns, given an opportunity to respond and supported through an appropriate review process.

4.4 Where improvement cannot be achieved despite reasonable support, the Council may consider further action, including redeployment where suitable or, as a last resort, termination of employment in accordance with this policy and applicable employment law.

5 Definitions

5.1 Capability: An employee's ability to perform the duties and responsibilities of their role to the required standard, having regard to their knowledge, skills, competence, experience, training and other relevant factors.

5.2 Capability concern: A concern that an employee is not consistently meeting the reasonable requirements or standards of their role.

5.3 Informal management: An initial, supportive approach to addressing performance concerns through discussion, feedback, coaching, training and agreed improvement actions.

5.4 Formal capability procedure: The structured process used when informal support has not resolved the concerns, or where the seriousness or persistence of the concerns justifies formal intervention.

5.5 Performance improvement plan (PIP): A written plan setting out the areas requiring improvement, the expected standards, the support to be provided, the timescales and the arrangements for reviewing progress.

5.6 Reasonable adjustment: A change to working arrangements, equipment, duties or the working environment that may be required to remove or reduce a substantial disadvantage experienced by a disabled employee.

6 Principles

6.1 The following principles will underpin the implementation of this policy.

- Fairness and consistency
  Employees will be treated fairly and with dignity. Similar cases will be approached consistently, while recognising that each case must be considered on its individual circumstances.
- Early intervention
  Managers should address emerging performance concerns promptly rather than allowing them to continue without appropriate support or feedback.
- Support and development
  The Council will seek to identify the causes of capability concerns and provide reasonable support, training, coaching, mentoring or other development opportunities.

- Clear expectations
  Employees must understand the standards required of them, how performance will be assessed and what improvement is necessary.
- Evidence-based decisions
  Capability decisions must be based on relevant, accurate and proportionate evidence rather than unsupported assumptions or personal opinion.
- Equality and inclusion
  The Council will consider equality implications, disability-related factors, reasonable adjustments and any other relevant circumstances before deciding on appropriate action.
- Confidentiality
  Capability matters will be handled sensitively. Information will only be shared with individuals who need it for legitimate employment or management purposes, in accordance with data protection requirements.
- Right to representation and appeal
  Employees will be informed of their rights to be accompanied at formal capability meetings, where applicable, and their right to appeal formal decisions.

7 Roles and responsibilities

7.1 Employees

Employees are responsible for:

- Understanding the requirements and standards of their role.
- Performing their duties to the best of their ability.
- Participating constructively in supervision, performance reviews and capability meetings.
- Raising concerns about workload, training, resources, instructions or other barriers to effective performance.
- Engaging with reasonable training, coaching and development opportunities.
- Working with their manager to agree and implement improvement actions.
- Informing their manager of relevant circumstances that may affect their ability to perform their duties, where appropriate.

7.2 The Clerk

The Clerk is responsible for:

- Setting clear objectives and communicating expected performance standards.
- Providing regular supervision, feedback and performance reviews.
- Identifying capability concerns promptly and discussing them with the employee.
- Establishing the facts and considering potential causes of underperformance.
- Ensuring that employees receive appropriate training, resources and support.
- Developing and reviewing performance improvement plans where necessary.
- Maintaining accurate, objective and confidential records.
- Consulting HR before initiating formal capability action.
- Applying the procedure consistently and considering reasonable adjustments where appropriate.

7.3 Human Resources Advice and Guidance (Peninsula)

HR is responsible for:

- Advising the Clerk on the interpretation and application of this policy.
- Supporting managers to ensure that capability processes are fair, proportionate and consistent.
- Advising on equality, reasonable adjustments, employment rights and procedural requirements.
- Reviewing formal capability documentation and proposed outcomes.
- Supporting the identification of suitable alternatives to dismissal where appropriate.
- Monitoring the application of the policy and recommending improvements.

7.4 Clerk/Establishment Committee

The Clerk and the Establishment committee are responsible for ensuring that capability concerns are managed effectively within their services, that managers receive appropriate guidance and that any formal action is proportionate to the circumstances.

7.5 Trade Union Representatives

Recognised trade union representatives may support employees in accordance with the Council's applicable arrangements and the employee's statutory rights.

8 Identifying Capability Concerns

8.1 Capability concerns may be identified through supervision, performance appraisals, quality assurance processes, service monitoring, customer feedback, completion of work, professional assessments or other relevant and reliable evidence.

Examples may include:

- Persistent failure to meet reasonable performance targets.
- Repeated errors or work that does not meet the required quality standards.
- Difficulty completing essential duties within reasonable timescales.
- Gaps in the knowledge, skills or competence required for the role.
- Inability to adapt to reasonable changes in duties, systems or working practices.
- Failure to maintain required professional competence, where relevant to the role.

8.2 Before concluding that a capability concern exists, the Clerk must consider whether expectations were clearly communicated and reasonable, whether the employee received appropriate training and support, and whether workload, resources, management arrangements or other workplace factors contributed to the issue.

8.3 Where concerns relate primarily to alleged misconduct, deliberate refusal to follow a reasonable instruction or other conduct matters, the Disciplinary Policy may be more appropriate. Where the distinction is unclear, HR advice should be sought.

9 Capability procedure

9.1 The Council's approach will normally follow the stages below. The procedure may be adjusted where necessary to reflect the seriousness, complexity or circumstances of the case, while maintaining procedural fairness.

9.2 Stage 1: Informal discussion and support

Where capability concerns arise, the Clerk should normally arrange an informal discussion with the employee as soon as reasonably practicable.

9.3 The discussion should:

i. Explain the concerns and provide specific examples.
ii. Clarify the required standards and the areas in which improvement is needed.
iii. Give the employee an opportunity to explain their perspective and identify any contributing factors.
iv. Establish whether training, coaching, mentoring, additional supervision or other support is required.
v. Consider whether adjustments to working arrangements or equipment may be appropriate.
vi. Agree reasonable improvement actions and a review date.

9.4 The Clerk should confirm the key points of the discussion in writing, including the support agreed and the expected timescale for improvement.
The informal stage is intended to support improvement and should not normally constitute a formal warning.

If performance improves to the required standard and remains satisfactory, the matter should be closed, subject to normal performance management arrangements.

If the concerns persist, the Clerk may seek HR advice about progressing to the formal procedure.

9.5 Stage 2: Formal capability meeting

Where informal action has not resulted in sufficient improvement, or where the concerns are sufficiently serious to justify formal intervention, the employee may be invited to a formal capability meeting.

9.6 The employee will normally receive written notice of the meeting, including:

- The nature of the capability concerns.
- Relevant examples and supporting information.
- The standards required and the improvements sought.
- The possible outcomes of the meeting.

- The date, time and location of the meeting.
- The right to be accompanied by a trade union representative or workplace colleague, in accordance with applicable rights and Council arrangements.

The employee should be given reasonable time to prepare and access to relevant documents.

9.7 At the meeting, the Clerk will explain the concerns and evidence, and the employee will have an opportunity to respond, ask questions and provide relevant information. The manager should consider any explanations, mitigation, training needs, workplace factors and reasonable adjustments before reaching a decision.

The meeting may be adjourned where further information is required.
Following the meeting, the manager will confirm the decision in writing, including the reasons, the actions required and any applicable right of appeal.

9.8 Stage 3: Performance improvement plan

Where improvement is required, a written performance improvement plan will normally be established.

9.9 The plan should include:

- The specific areas of concern.
- The standards and outcomes that must be achieved.
- Measurable and realistic improvement objectives.
- The support, training and resources to be provided by the Council.
- Any agreed reasonable adjustments.
- The review arrangements and responsible manager.
- The period allowed for improvement.
- The potential consequences of failing to achieve the required standard.

The improvement period will be reasonable and proportionate to the role, the nature of the concerns and the support required. It should normally allow sufficient time for the employee to demonstrate sustained improvement.
Regular review meetings will be held during the improvement period. Feedback should be specific and constructive, and progress should be recorded.

9.10 Stage 4: Formal capability warning and review

If the required improvement has not been achieved, the Clerk may issue a formal capability warning, where justified by the evidence and following the appropriate meeting.

9.11 The warning should specify:

- The reasons for the decision.
- The standards that remain unmet.
- The further improvement required.
- The support and review arrangements.
- The timescale for improvement.
- The consequences of failing to improve.
- The duration of the warning, where applicable.
- The right of appeal.

The Council may use the following warning structure, subject to its adopted employment arrangements:

9.12 First formal warning: Issued where capability concerns remain unresolved following appropriate informal support or where formal action is otherwise justified.

9.13 Final formal warning: Considered where improvement remains insufficient following an earlier formal warning, or where the seriousness of the capability concerns warrants a final warning.

9.14 Warnings must be proportionate to the circumstances. The Council will not automatically issue a warning without considering the evidence, the employee's response and the support provided.

A further review period will be set, with continued support and monitoring.

9.15 Stage 5: Final capability review

If the required standard has still not been achieved following the formal improvement period, a final capability review meeting may be arranged.
The employee will receive written notice of the meeting and the information to be considered, together with details of the possible outcomes.

9.16 The meeting will consider:

- The original concerns and subsequent evidence.
- The employee's progress against the improvement plan.
- The effectiveness and adequacy of the support provided.
- Any new information or mitigating circumstances.
- Whether further training, adjustments or an extension to the review period is reasonable.
- Whether alternative duties or suitable redeployment opportunities should be explored.
- Whether the required standard can reasonably be achieved and maintained.
- Possible outcomes include:

    - Confirmation that the required standard has been achieved and the procedure is concluded.
    - Extension of the improvement period, where justified.
    - Continuation or adjustment of the improvement plan.
    - A further formal warning, where appropriate.
    - Consideration of suitable alternative employment or redeployment.
    - Termination of employment on capability grounds, where justified and after all relevant alternatives have been considered.

9.17 Dismissal will be a last resort and may only be authorised by the Establishment Committee with HR advice, in accordance with the Council's scheme of delegation and employment arrangements.
The decision will be confirmed in writing, with reasons and details of the right to appeal.

10 Review meetings and monitoring

10.1 Review meetings should be arranged at reasonable intervals throughout the improvement period. The frequency will depend on the nature of the role and the concerns being addressed.

10.2 At each review, the manager should:

- Assess progress against the agreed objectives.
- Provide examples of satisfactory or unsatisfactory performance.
- Consider whether the agreed support has been delivered.
- Discuss any barriers to improvement.

- Update the improvement plan where necessary.
- Record the outcome and confirm the next steps in writing.

10.3 Where the employee achieves the required standard, this should be acknowledged and recorded. The Clerk should continue to monitor performance through normal supervision and appraisal arrangements.

10.4 Where progress is insufficient, the Clerk should explain the reasons and consider whether additional support, a revised plan or further formal action is appropriate.

11 Extension of improvement periods

11.1 An improvement period may be extended where there is a reasonable prospect of improvement, and an extension is fair in the circumstances.

Relevant factors may include:

- Progress already achieved.
- The complexity of the duties involved.
- The time reasonably required to demonstrate competence.
- Training or development opportunities that have been delayed.
- Periods of authorised absence or other relevant circumstances.
- The need to implement or evaluate reasonable adjustments.

Any extension should be confirmed in writing, explaining the revised objectives, timescales and review arrangements.

An extension should not be refused automatically where relevant circumstances have affected the employee's opportunity to demonstrate improvement.

12 Disability, health and reasonable adjustments

12.1 The Council recognises its obligations under the Equality Act 2010 and other applicable employment legislation.

12.2 Where a capability concern may be related to a disability or health condition, the manager should seek appropriate HR advice and consider whether reasonable adjustments may be required.

12.3 Adjustments may include changes to working arrangements, equipment, duties, supervision, working hours, performance assessment arrangements or access to training, where reasonable and appropriate.

12.4 Occupational health advice may be sought with the appropriate consent and in accordance with applicable procedures.

12.5 Health-related capability matters, including concerns about an employee's ongoing ability to undertake their role due to ill health, should normally be managed under the Council's Attendance Management or Ill-Health Capability Procedure, where one applies.

12.6 A disability or health condition must not automatically be treated as evidence of unsatisfactory capability. Decisions must take account of the individual circumstances, relevant medical or occupational health advice, reasonable adjustments and the requirements of the role.

13 Temporary changes to duties and redeployment

13.1 Where an employee is unable to meet the requirements of their current role despite appropriate support, the Council may consider whether suitable alternative duties, a change in responsibilities or redeployment may be appropriate.

13.2 Any proposed alternative employment will be assessed against the employee's skills, experience, capabilities and the operational needs of the Council. The Council will also consider relevant contractual provisions, reasonable adjustments and applicable legal requirements.

13.3 Redeployment is not guaranteed and will depend on the availability and suitability of opportunities. HR will advise on the appropriate process.

14 Suspension or temporary restrictions

14.1 Capability concerns will not normally justify suspension, as suspension is generally associated with other employment procedures rather than ordinary performance management.

14.2 However, where there is an immediate risk to service users, employees, the public or the safe delivery of services, the Council may consider proportionate temporary measures, such as supervision, restricted duties or temporary reassignment.

14.3 Any such action must be necessary, reasonable, regularly reviewed and consistent with relevant policies and contractual arrangements. HR advice should be obtained.

15 Right to be accompanied

15.1 At formal capability meetings, employees will be entitled to be accompanied where required by law and in accordance with the Council's applicable arrangements.

The companion may be a recognised trade union representative, an appropriately certified trade union official or a workplace colleague, as applicable.

15.2 The employee should notify the Council of their chosen companion in reasonable time before the meeting. Where a companion cannot attend at the proposed time, the Council will consider a reasonable alternative date in accordance with applicable statutory requirements.

15.3 The companion may address the meeting, put forward the employee's case, respond to views expressed and confer with the employee. The companion does not have the right to answer questions on the employee's behalf where the employee is asked to respond directly.

16 Appeals

16.1 An employee may appeal against a formal capability warning, a formal capability decision or dismissal under this procedure.

16.2 The appeal must normally be submitted in writing within 10 working days of receipt of the written decision, setting out the grounds of appeal. The Council may consider a late appeal where there is a reasonable explanation.

16.3 Grounds for appeal may include:

- The procedure was not followed fairly.
- The decision was unreasonable or unsupported by the evidence.
- Relevant information was not properly considered.
- New evidence has become available.
- The outcome or sanction was disproportionate.
- Relevant reasonable adjustments or mitigating circumstances were not adequately considered.

16.4 Where practicable, the appeal will be heard by the Appeals Panel who has not previously been involved in the case and who has the appropriate level of authority. HR advice will be provided as necessary.

The employee will receive reasonable notice of the appeal hearing and will have an opportunity to explain their grounds of appeal and provide relevant evidence.

16.5 The appeal manager may uphold the original decision, overturn it, substitute a different outcome or refer the matter back for further consideration, as appropriate.
The appeal decision will be confirmed in writing, including the reasons. The appeal outcome will normally be final under this procedure.

17 Confidentiality and record keeping

17.1 All capability matters must be handled confidentially and in accordance with UK data protection legislation and the Council's information governance requirements.

17.2 The Clerk and managers must maintain accurate, relevant and proportionate records of discussions, meetings, evidence, improvement plans, support provided, decisions and appeals.
Records should be stored securely and retained in accordance with the Council's retention schedule. Access should be limited to those who need the information for legitimate employment purposes.

17.3 Employees may request access to their personal data in accordance with applicable data protection legislation.

18 Overlapping procedures

18.1 Where a capability concern overlaps with another employment matter, the Council will determine the most appropriate process after seeking HR advice.

Examples include:

- Misconduct: The Disciplinary Policy may apply where the principal concern relates to conduct rather than ability.
- Sickness absence: The Attendance Management or Ill-Health Capability Procedure may apply where health affects the ability to undertake duties.
- Probation: The Probationary Policy may apply to employees who have not completed their probationary period.
- Grievances: Where an employee raises a grievance during a capability process, the Council will consider whether it is relevant to the capability concerns and whether any part of the process should be paused or adjusted.

- Safeguarding or professional concerns: Relevant safeguarding, regulatory or professional procedures may need to be followed alongside or instead of this policy.

18.2 The Council will seek to avoid unnecessary duplication and ensure that employees are not treated unfairly because more than one procedure may be relevant.

19 Protection from victimisation and retaliation

19.1 Employees must not be treated unfavourably for raising genuine concerns, requesting reasonable adjustments, exercising employment rights, seeking trade union support or participating in a capability process in good faith. The Council will not tolerate discriminatory treatment, harassment, victimisation or retaliation in the application of this policy.

19.2 Any concerns about the fairness or conduct of a capability process should be raised with the Clerk, HR or through the appropriate Council procedure.

20 Monitoring and review

20.1 The Council will periodically review the implementation and effectiveness of this policy.

20.2 Monitoring may include consideration of:

- The number and outcomes of formal capability cases.
- The timeliness and consistency of processes.
- Training and development needs identified.
- Equality impacts and any relevant patterns in outcomes.
- Feedback from managers, employees and recognised trade unions.
- Relevant changes in employment legislation or good practice.

20.3 The policy will be reviewed on a bi-annual basis, or earlier where required by changes in legislation, organisational requirements or employment practice.