

SOUTH DERBYSHIRE DISTRICT COUNCIL

**CAPABILITY PROCEDURE
(Work Performance)**

Presented to Finance & Management Committee on 15th February 2005 for Approval

CONTENTS

	<u>Page</u>
Section 1 – Introduction	1
Section 2 – Discrimination	1
Section 3 – Who Does the Procedure Cover?	1
Section 4 – Definition of Capability for the Purpose of this Policy	1
Section 5 – Aims of the Capability Procedure	2
Section 6 – Capability and Effective Recruitment and Selection	2
Section 7 – Induction and Probation	3
Section 8 – Exit Interviews	3
Section 9 – General Principles	3
Section 10 – Discipline and Capability	5
Section 11 – Grievance and Capability	5
Section 12 – Sickness Absence and Capability	6
Section 13 – Disability	6
Section 14 – External Independent Support	6
Section 15 – The Procedure	7
Section 16 – Review Period	12
Section 17 – Records	13
Section 18 – Termination of Employment	13
Section 19 – Redeployment	13
Section 20 – Appeals	13
Section 21 – Review of Procedure	17
Annexe A	
Conduct of Appeal Hearing by a Director (action short of dismissal)	18
Annexe B	
Conduct of Appeal Hearing by Panel from the Licensing and Appeals Committee (dismissal only)	20

1.0 INTRODUCTION

1.1 The Council needs the effective and consistent performance of its employees in their jobs to deliver quality services and to meet its service objectives and commitments. To help achieve this there needs to be a means of identifying and addressing occasions where capability (defined in Section 4) and performance falls below an expected and acceptable standard. This procedure aims to provide a framework to ensure a consistent, fair and transparent approach in these matters.

1.2 It is recognised that effective organisational and individual performance is achieved by a committed employee who has been properly inducted, supervised and where appropriate, developed and trained to do their job.

1.3 This procedure has been agreed with the relevant trade unions.

2.0 DISCRIMINATION

2.1 The Council considers it unacceptable to discriminate by using this Capability Procedure. Examples of this would be to victimise an individual by using this procedure because he or she has;

- Made a complaint about being discriminated against because of their gender, race, ethnic or national origin, disability, family status, age religious belief, class or sexuality.
- Complained about being harassed or bullied.
- Given evidence in proceedings concerning complaints about discrimination or harassment.

This is not an exhaustive list of examples.

2.2 Allegations of discrimination or harassment by an employee will be investigated under the appropriate procedure and may lead to disciplinary action, including dismissal, being taken.

3.0 WHO DOES THE PROCEDURE COVER?

3.1 The procedure applies to all employees except the Chief Executive and those employed under "Chief Officer Terms and Conditions of Service". These employees are covered by separate procedures, which are included in the appropriate Conditions of Service handbook.

4.0 DEFINITION OF CAPABILITY FOR THE PURPOSE OF THIS POLICY

4.1 Capability is defined as the ability of an employee to carry out the duties and responsibilities of their post. It is assessed by reference to:

- Skill.
- Aptitude.
- Health or any other physical or mental quality.
- Competence.
- Qualifications relevant to the position which the employee holds.

- 4.2 The Council's Sickness Absence Management Procedure is designed to deal with cases where capability and health are concerned i.e. where an employee is having difficulty or is incapable, because of health reasons of carrying out the duties of her/his post.
- 4.3 The Capability Procedure is designed to deal with occasions where an employee may not be performing to the required standard expected in their post. The procedure provides a framework to follow in terms of identifying and addressing capability issues.

5.0 AIMS OF THE CAPABILITY PROCEDURE

5.1 The aims of the procedure are to:

- Ensure that the expected standards of performance are made clear to an employee.
- Provide a fair, consistent and transparent approach when dealing with capability issues.
- Encourage and help an employee to improve her/his standard of work before any formal action is taken.
- Help an employee to identify the reason(s) for her/his poor standard of work and how this can be improved.
- Provide an opportunity and assistance for the employee to improve her/his standard of work to a satisfactory level.
- Ensure that an employee has fair input and representation (where required) through a structured process.
- Provide a framework for managers to deal with capability issues in a timely and effective manner.
- Promote capability and performance as a fundamental management responsibility.
- Make clear the actions that can be taken if the expected standards of performance are not achieved.

6.0 CAPABILITY AND EFFECTIVE RECRUITMENT AND SELECTION

Job Description and Person Specification

- 6.1 Effective recruitment and selection can help to prevent capability issues. A Job Description should accurately reflect the main purpose, tasks and scope of the post. A Person Specification should clearly and measurably define the experience, skills, abilities and competencies required to do the job. These documents should be reviewed and updated if necessary for every recruitment and selection process. A job advertisement can then be written that clearly sets out the purpose of the job and the competencies required.
- 6.2 The Person Specification also helps design the selection process, which should test for the competencies, required in the post. This principle should be applied at every level where possible. The Person Specification should clearly show how the requirements of the job will be assessed i.e. whether this from the application form, at interview or by using an appropriate selection method in addition to the interview.

Selection process

- 6.3 The selection process should provide enough evidence for the interview panel to be able to assess and select an individual who matches the skills, abilities and competencies required.
- 6.4 Although the interview is a central feature of the selection process, there are other methods to assess a candidate's suitability for the post. Using a range of selection methods demonstrates a commitment by the Council to ensure that the best person is appointed. Additionally, a more "rounded" view is obtained and candidates are allowed the opportunity to perform in different situations.
- 6.5 Human Resources will provide advice on selection methods and the matching of these to the post in question. The purpose of any selection method is to gather information about candidates to help predict their performance in the job. It should be appropriate for the post in question, fair, objective and non-discriminatory.

7.0 INDUCTION AND PROBATION

- 7.1 Once an individual is appointed, a properly conducted induction can help her/his effective management.
- 7.2 At induction, the expected standards of performance should be explained and any learning or development needs agreed.
- 7.3 For new starters to the Council it is important that the probationary period is used to discuss performance and that support is offered by the manager/supervisor to resolve any difficulties. Dismissal can occur within the probationary period. It is important to ensure that the process and decision making is fair and that as much support as reasonably practical has been offered.

8.0 EXIT INTERVIEWS

- 8.1 Where appropriate, information from exit interviews may be used to help the Council improve its approach to performance management.

9.0 GENERAL PRINCIPLES

The manager's responsibilities

- 9.1 It is a manager's responsibility to ensure that reasonable standards of performance are set and monitored for employees. Standards should be realistic and measurable in terms of quality, quantity, time and cost. Managers will receive appropriate training to help fulfil their responsibility to establish performance standards for employees, which are fair and reasonable.
- 9.2 Managers need to ensure that employees receive appropriate and adequate supervision and that appropriate learning and development opportunities are provided to enable the performance of their duties to an acceptable standard.

- 9.3 Managers should provide, at least annually through the Performance Development and Review process, the opportunity for an employee to discuss her/his learning and development needs.
- 9.4 An employee must be made aware of any concern with their performance immediately. This will initially be done through day to day supervision or review processes. The manager will keep a record of any issue that has required her/his attention. This informal process must be in a place before the formal procedure can be started.
- 9.5 The manager should observe the following when an employee begins his/her employment:
- The employee should receive an appropriate induction.
 - The conditions relating to any probationary/trial period should be explained to the employee.
 - The required standard of work should be explained and where possible agreed so the employee is in no doubt what is expected.
 - The conduct expected of the employee.
 - The employee's performance should be reviewed through regular supervision/review arrangements e.g. the Probationary Procedure provides for regular meetings to discuss standards of performance and learning and development needs.
 - Job Descriptions should accurately convey the main purpose, tasks and scope of each job and updated to reflect any changes.
 - Where necessary on-the-job and other appropriate training should be provided.
- 9.6 Managers should ensure that records of all discussions and interviews are kept together with evidence relating to the monitoring and review of work targets.
- 9.7 Managers must be able to demonstrate that all appropriate efforts have been made to assist the employee to achieve the required level of performance prior to invoking any formal procedures, which might lead to dismissal.

The employee's responsibilities

- 9.8 An employee has the responsibility and an accepted contractual requirement to achieve and maintain a satisfactory level of performance within her/his role. An employee should also ensure that any issue is raised immediately with her/his manager that may impact on her/his performance at work.

Representation

- 9.9 There is no right of representation during the initial informal stage of the procedure.
- 9.10 An employee will have the right to be represented during the formal stages of the procedure by a trade union official or another employee of the Council.

Assistance

- 9.11 Employees can obtain assistance to help them comply with this procedure (e.g. to write to management to put together a Statement of Case) from their trade union representative or a colleague. Human Resources, their manager and trade union representative can also advise on how the procedure works.

Investigation

- 9.12 In some cases, a capability issue will require formal investigation. In such cases, a member of Human Resources will assist the appropriate manager/supervisor.
- 9.13 Notes will be taken of any interviews that are undertaken during a formal investigation. The employee who is interviewed will be able to review the notes and will then be expected to sign and date them as a true record of the interview. The employee will be given a copy of the notes. The signed notes will then be included in the formal report on the investigation and in any required Statement of Case.

Appeal Rights

- 9.14 An employee can appeal against any decision taken during the formal stages of the procedure.

10.0 DISCIPLINE AND CAPABILITY

- 10.1 It is important that managers, supervisors and employees understand the difference between discipline and capability.
- 10.2 The Council has a published Employee Code of Conduct (The Intranet address is Public Folders/All Public Folders/Personnel/Code of Conduct). This provides a set of rules or standards of behaviour/conduct for all employees. If an employee is thought to have broken one of these rules the situation will be dealt with under the Disciplinary Procedure (the Intranet address is Public Folders/All Public Folders/Personnel/Disciplinary Procedure). Examples of misconduct (it is not an exhaustive list) are included with the Disciplinary Procedure.
- 10.3 Capability is defined in Section 4 of this document. However, there may be instances where an employee is wilfully under-performing or where she/he has been negligent in her/his duties. These types of performance issues should be dealt with under the Disciplinary Procedure.
- 10.4 It is important that the appropriate procedure is followed in each case. Managers should always consult with Human Resources before taking any formal action under a procedure.

11.0 GRIEVANCE AND CAPABILITY

- 11.1 In the course of a capability matter an employee might raise a grievance that is related to the case. In most circumstances, it will be expected that the grievance

should be addressed under the procedure currently being followed. However, this will not prevent the employee submitting a formal grievance. If this happens, it may be appropriate (depending on the circumstances) to suspend the Capability Procedure for a short period until the grievance can be considered. This does not mean that the Capability Procedure should cease. Additionally, depending on the nature of the grievance, consideration may be given to bringing in another manager to deal with the capability case.

11.2 If it is considered, following an appropriate investigation, that an employee's grievance has been malicious and without substance then the matter will be dealt with under the Disciplinary Procedure.

11.3 Capability proceedings should not be started by a manager/supervisor against an employee who has already lodged a grievance against her/him. Any capability proceedings will, if appropriate, await the completion of the Grievance Procedure.

12.0 SICKNESS ABSENCE AND CAPABILITY

12.1 If an employee falls sick during the course of the Capability Procedure, it does not necessarily mean that the procedure will be suspended until her/his return to work. The individual circumstances will be discussed with Human Resources before a decision is taken.

12.2 To ensure that the matter is resolved at the earliest opportunity a range of options could be used to continue the capability case. This will depend on the nature of the illness and the ability of the individual to make an appropriate response. Options could include a meeting being arranged at a neutral venue, a written exchange of information or the matter being continued by the recognised representative of the employee.

13.0 DISABILITY

13.1 It may be that during a capability case, it is established that an employee's unsatisfactory performance is due to a disability (defined by the Disability Discrimination Act 1995). The Council takes a positive approach to the employment of anyone with a recognised disability and is committed to trying to retain employees in such circumstances. The Council will consider whether any reasonable adjustment can be made to enable the employee to perform her/his duties satisfactorily. Advice will be sought from the Council's Occupational Health Advisor if necessary. The Council's policy on Disability Leave (included in the Sickness Absence Management procedure) may also apply. This policy is designed to help employees who require time off for rehabilitation assessment and treatment.

13.2 An employee is advised to make any health problems known to her/his manager in order that reasonable and appropriate assistance can be provided.

14.0 EXTERNAL INDEPENDENT SUPPORT

14.1 External independent support may on occasion be required to help resolve a capability issue. Examples of where this might happen would be where it is

considered independent persons are required to hear a case or to conduct an investigation.

14.2 External independent support will only be sought with the agreement of both parties involved. There should also be agreement on who and what type of support is used.

15.0 THE PROCEDURE

Informal procedure

15.1 During normal day-to-day management of an employee, any concern about her/his standard of work should immediately be brought to their attention. A line manager or supervisor must explain her/his concerns about an employee's standard of work. This can prevent the need for formal action.

15.2 During an informal discussion with the employee the line manager should:

- Explain the area(s) of work in which the employee is not performing satisfactorily and provide supporting information and examples.
- Clearly define the standards of performance required.
- Ascertain whether the employee accepts there is a problem.
- Listen to any explanation offered by the employee to try and establish whether there are underlying reasons for the poor standard of work or performance.
- Discuss how the employee can try to improve.
- Determine what actions are going to be used to help ensure that the standards of performance are achieved.
- Identify any learning needs.
- Determine a process for monitoring and reviewing performance (including setting time scales).
- Outline the implications of a continued failure to achieve the required standards of performance.

15.3 It is advisable that the line manager takes notes of any informal discussion(s) with an employee. Actions agreed will be confirmed to the employee in writing. The correspondence will make clear that the formal procedure has not started. Letters and notes will be put on the employee's personal file for future reference in case this is necessary. This correspondence will not be taken into account after a period of 12 months of its date or until the expiry of any formal stage(s) of the procedure that might follow. After the appropriate period of time, the correspondence will be removed from the employee's personal file and destroyed.

15.4 In addition to applying objectives, support arrangements and a review period another outcome may be at this stage that it is established that the employee's unsatisfactory performance is due to a disability (defined by the Disability Discrimination Act 1995). If so, the line manager or supervisor in consultation with Human Resources should consider whether a reasonable adjustment could be made to enable the employee to perform her/his duties satisfactorily. Advice will be sought from the Council's Occupational Health Advisor if necessary.

Where redeployment to another post is considered an appropriate reasonable adjustment, the Council's Sickness Absence Management Procedure will apply.

Formal procedure - introduction

- 15.5 When it becomes apparent that an informal approach to improving performance has been unsuccessful, the employee should be told that a formal process will be entered into and that a first formal interview will be arranged.
- 15.6 The primary objective of each stage of the formal procedure is to improve performance. Although in most cases, stages will be sequential, some cases may require longer due to the complexity of the situation or where there is improvement but it is not enough or sustained.

Formal stage – first formal interview

- 15.7 A first formal interview will be arranged if the line manager considers that the informal approach has failed to help the employee improve her/his performance.
- 15.8 The line manager will conduct the interview and will be responsible for ensuring that the employee is provided with at least 5 working days written notice. The written notice must inform the employee:
- That the formal Capability Procedure is being started.
 - Of the date, time and venue of the interview.
 - The purpose of the interview.
 - The area(s) of work where the required standards of performance are not being met.
 - That the objective will be to identify actions to resolve the matter at the earliest opportunity.
 - That any assistance and support the employee may need to achieve satisfactory performance will be discussed.
 - Who else will be present at the interview and what their roles will be.
 - That the employee will have the opportunity to explain her /his point of view.
 - That she/he will be able to be represented
- 15.9 The line manager should also ensure that any information that she/he intends to refer to at the interview is given to the employee at least 2 working days in advance. The line manager should also give the employee the opportunity to provide any written information that she/he intends to refer to at the interview by the same deadline.
- 15.10 The line manager will ensure that a member of Human Resources is present to act as an advisor.
- 15.11 At the formal interview the line manager will follow the procedure below:
- (a) **Step One**
The line manager will ensure that the employee is fully aware that the formal procedure has been started. She/he will also explain the purpose of the interview and the roles of those present.

(b) **Step Two**
The line manager will explain where and why the employee's standard of performance is considered to be unsatisfactory. This will include presenting relevant information already provided to the employee e.g. notes of previous discussions. The assistance offered to the employee to help her/him to achieve the required standard(s) should also be discussed.

(c) **Step Three**
The employee will be given the opportunity to raise any points and ask questions. She/he can refer to information already provided to the manager that she/he wishes to have considered.

(d) **Step Four**
The line manager will consider all the information available and consider such factors as:

- The required standards of performance expected within the role and the reasonableness of these.
- Whether it has been established what performance standard(s) would be applied to the area(s) of concern.
- Whether it has been established how measurement/assessment would take place.
- What skills and experience the employee held and whether these together with the training, development and other support that the employee has received have been sufficient to carry out the job to the required standard.
- What actions have been taken to address the areas of poor performance.
- Whether the employee has achieved the standards of performance expected.

If the line manager, after taking into account the information available, considers the employee's performance to be unsatisfactory, the employee will receive a formal warning. This should be confirmed at the interview and also that unless performance does not improve further action under this procedure would be taken. Additionally, the line manager will consider the appropriateness of the following actions:

- (a) Further support through training and development.
- (b) Additional supervision or instruction.
- (c) Changes in the method of management or supervision.
- (d) If possible and appropriate, changes in the work context of the post.
- (e) Changes to existing terms and conditions of employment i.e. this could result in changes to work responsibilities, location, entitlements.

15.12 It is important at the interview that the employee is clear on where there is a shortfall in performance and is informed of any actions considered necessary (i.e. from (a) to (e) above).

15.13 The employee's performance will be monitored for a specified time period (see Section 16 - Review Periods).

Written confirmation of outcome of first formal interview

- 15.14 In addition to being verbally informed at the first formal interview, the employee will then receive written confirmation (copy to the employee's representative) of the outcome of the first formal interview. The line manager's letter should include:
- A summary of the issues discussed.
 - The standards required.
 - The action(s) to be taken.
 - The timescale (review period) for performance to be improved. The start and end dates of the review period should be included together with the dates of intermediary review meetings to monitor progress.
 - Confirmation that a formal warning is being issued and of the consequences should there be insufficient improvement in the employee's performance following the review period.
 - The employee's right of appeal (See Section 20 – Appeals).
- 15.15 The employee should receive the letter by no later than 5 working days of the interview taking place. A copy of it will be put on the employee's personal file.
- 15.16 The written confirmation of the outcome of the first formal interview and information used to monitor performance will remain on the employee's personal file for a period of 12 months from the date of the letter or until the expiry of any other formal action taken under this procedure. After the appropriate period all correspondence and related information will be removed from the personal file and destroyed.

Formal stage – second formal interview

- 15.17 The purpose of the second formal interview will be to assess the employee's overall performance during the review period. The interview will normally be arranged by the line manager at least 10 working days before the end of the review period. However, the interview may be arranged earlier, if the manager considers that the employee's performance has not improved as expected.
- 15.18 The line manager will arrange and conduct the interview on the same lines as the first formal interview.

Unsatisfactory work performance during review period

- 15.19 If, after considering all the information available, the employee's performance is still considered unsatisfactory the line manager will consider identifying further assistance to help the employee improve her/his performance.
- 15.20 A **final** review period will be arranged during which, the employee's performance will continue to be monitored.
- 15.21 The employee will be given a **final formal warning**. This will state that their performance is still unsatisfactory and that failure to sufficiently improve will result in the termination of employment on the grounds of capability.

Improvement in work performance but not to the required standard

- 15.22 After considering all the information available, it might be considered that the employee's work performance has improved but not to the required standard. In this case the line manager might consider extending the initial review period.
- 15.23 A further warning would not be given in this case. However, it must be made clear that continued improvement must be made to achieve the required standard within the extended period of time. The employee should also be informed that a final formal warning would be given if the improvement required were not achieved.
- 15.24 Details of ongoing support and assistance should also be confirmed.

Satisfactory improvement in work performance.

- 15.25 After considering all the information available, it might be decided that the employee's work performance has satisfactorily improved.
- 15.26 In this case it should be confirmed that further formal review periods under this procedure will not be required and that the improvement is expected to be maintained. The employee should also be informed that the formal warning given at the first formal interview will remain in force until its expiry.

Written confirmation of outcome of second formal interview

- 15.27 In addition to being informed at the interview, the employee will receive written confirmation (copy to the employee's representative) of the outcome of the second formal interview. The employee should receive the letter by no later than 5 working days after the second formal interview has taken place. Where appropriate the letter should make it clear that a **final** formal warning has been given and that a **final** review period is being implemented. Therefore, failure by the employee to sufficiently improve performance will result in termination of employment on the grounds of capability.
- 15.28 The written confirmation of the outcome of the second formal interview and any information used to monitor performance will remain on the employee's personal file for a period of 12 months from the date of the letter or until the expiry of any other formal action taken during that time. After the appropriate period of time all correspondence and related information will be removed from the personal file and destroyed.

Formal stage – third and final formal interview

- 15.29 This interview will be arranged and conducted by a manager with the authority to terminate employment. A representative from Human Resources will also be present.
- 15.30 The interview will be arranged and conducted on the same lines as the first two. However, at this stage the line manager who conducted the previous meetings will present the facts on behalf of the Council.

Continuing unsatisfactory work performance

15.31 If the manager conducting the interview, advised by Human Resources considers that:

- There is evidence of continuing incapability
- The employee has not given a reasonable explanation for the continued unsatisfactory work performance
- The commitments made by management to support the employee under the previous stages have been delivered.

Notice of termination of employment on the grounds of capability will be given (see Section 18 –Termination of employment).

Satisfactory work performance

15.32 After considering all the information available, it might be decided that the employee's work performance has satisfactorily improved.

15.33 In this case it should be confirmed that further formal review periods under this procedure will not be required and that the improvement is expected to be maintained. The employee should also be informed that the final warning given at the second formal interview will remain in force until its expiry.

Written confirmation of outcome of third formal interview

15.34 The outcome of the third and final formal interview must be confirmed in writing to the employee (copy to her/his representative). The employee should be written to by no later than 5 working days of the third interview taking place. A copy of the correspondence will be put on the employee's personal file.

15.35 Written confirmation of satisfactory performance will remain on the personal file until the expiry of the final formal warning given under this procedure.

16.0 REVIEW PERIODS

16.1 The length of a review period will depend on the case in question i.e. the nature of the problem and any reasonable time that can be allowed to bring about a sufficient improvement in the employee's performance.

16.2 A review period will normally be allowed to expire before any further action is taken. However, a review may be terminated early by a manager, subject to proper notice being given, where the employee's performance has not improved as expected. A review period will be for a specified time. This will normally be for an initial period of at least one month.

16.3 Any action(s) identified to help improve the employee's performance must be implemented during a review period. Such actions must be measurable, realistic, fair and provide the appropriate resources.

16.4 Regular progress meetings will be scheduled during a review period. These meetings should consider the plan implemented to assist and support the employee to improve performance and any actions completed.

17.0 RECORDS

17.1 Managers must take notes of informal discussions and formal interviews with employees. They should also keep records of performance assessments made during a review period.

17.2 Human Resources will file all correspondence and records relevant to a capability issue for the required period of time. Records will be kept in a secure and confidential manner and in accordance with Data Protection Act 1998.

18.0 TERMINATION OF EMPLOYMENT

18.1 Termination of employment will only occur at the final stage during the procedure and be on the grounds of incapability. This will be confirmed in writing to the employee. The letter should also:

- Outline the area(s) where the employee has failed to achieve the required standard(s).
- Set out how the employee can appeal (see Section 20 - Appeals)
- Provide the contractual period of notice to terminate employment. During the period of notice the employee will not be expected to attend work.

18.2 The Chief Executive must be notified immediately of any dismissal.

19.0 REDEPLOYMENT

19.1 Redeployment **will only** be considered where incapability is on the grounds of health. The Council's Protection of Earnings Policy will apply in appropriate cases where redeployment is possible.

19.2 Redeployment will be at the level that an employee is adjudged capable of satisfactorily performing i.e. it will not necessarily be equivalent in terms of responsibility and grade.

20.0 APPEALS

20.1 There are two levels of appeal against **formal action** under this procedure. These are:

- An appeal against **formal action that excludes dismissal**.
- An appeal against dismissal.

Appeal against formal action that excludes dismissal

20.2 If the employee wishes to appeal she/he should inform the Head of Human Resources in writing. This must be done by no later than 10 working days of receiving the manager's written decision.

20.3 The employee's letter must clearly state the ground(s) for their appeal. This must be based on the following:

- That the Capability Procedure has not been properly followed.
- That the employee has been unfairly treated within the provisions of the procedure.
- That the severity of the action is too great.

20.4 A Director will hear the Appeal. Where possible, this person must have had no involvement in the case.

Head of Human Resources (or representative)

20.5 The Head of Human Resources is responsible for:

- Making the appropriate arrangements for the Appeal Hearing. This must be done within 20 working days of receiving the employee's letter stating their ground(s) of appeal.
- Ensuring that the employee and manager are given at least 5 working days notice of the Appeal Hearing. The notice will include the procedure to be followed at the Appeal Hearing and confirm the employee's right to be represented.
- Arranging the attendance of a member of Human Resources at the Appeal Hearing to act as advisor/clerk to the Chair. Where possible, this person must have had no previous involvement in the case.
- Obtaining and exchanging Statements of Case. The exchange must take place by no later than 5 working days before the Appeal Hearing. It is acceptable for the manager to provide their Statement of Case in advance of receiving the employee's Statement of Case. A copy of both Statements will be given to the Chair of the hearing and advisor.

The line manager

20.6 The line manager who conducted the previous formal interviews will present the Council's case at the Appeal. He/she should:

- Produce a Statement of Case for presentation at the Hearing by the required deadline. A copy will then be given to the employee, Chair and advisor.
- Inform the Head of Human Resources (or representative) of anyone who they intend to call as a witness.
- Ensure that support is provided from Human Resources at the Appeal Hearing if appropriate.
- Arrange, if applicable, the attendance of any witness(es) at the Appeal Hearing.

Employee

20.7 The employee is responsible for:

- Producing a Statement of Case for presentation at the Appeal Hearing by the required deadline. A copy will then be given to the manager, Chair and advisor.
- Informing, if applicable, the Head of Human Resources (or representative) of anyone who intend to call as a witness
- Ensuring that any representative attends the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing.

Chair at Appeal Hearing

20.8 The Chair (Director) has the following responsibilities:

- Ensuring that the Hearing is conducted in line with the procedure outlined in Annexe A. New information (i.e. information that is not included in a submitted Statement of Case) cannot be introduced and heard at the Appeal Hearing. If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree.
- Informing the employee at the Appeal Hearing, if this is practicable, of the decision along with reason(s).
- Confirming the decision in writing to the employee and manager. This should be done by no later than 5 working days after the Appeal Hearing.

20.9 The decision of the Chair is final and there will be no further right of appeal.

Appeal against dismissal on grounds of incapability

20.10 If the employee wishes to appeal she/he should inform the Head of Legal and Democratic Services (copy to the Head of Human Resources) in writing. This must be done by no later than 10 working days of receiving the manager's written decision.

20.11 The employee's letter must clearly state the ground(s) for their Appeal. This must be based on the following:

- That the Capability Procedure has not been properly followed.
- That the employee has been unfairly treated within the provisions of the procedure.
- That the severity of the action is too great.

20.12 A Panel from the Council's Licensing and Appeals Committee will hear the Appeal.

The Head of Legal and Democratic Services (or representative)

20.13 The Head of Legal and Democratic Services (or representative) is responsible for:

- Making the appropriate arrangements for the Appeal Hearing (i.e. sending out the appropriate notice to those required to attend). This must be done within 20 working days of receipt of the employee's letter stating her/his grounds of appeal.

- Ensuring that the employee and manager are given at least 5 working days notice of the Appeal Hearing. The notice will include the procedure to be followed at the Appeal Hearing and confirm the employee's right to be represented.
- Arranging the attendance of a member of Legal Services at the Hearing to act as advisor/clerk to the Appeals Panel. Where possible, this person must have had no previous involvement in the case.
- Obtaining and exchanging Statements of Case. The exchange must take place by no later than 5 working days before the Appeal Hearing. It is acceptable for the manager to provide their Statement of Case in advance of receiving the employee's Statement of Case. Copies of the Statements of Case must also be provided to the Appeal Panel and its advisor.

The Manager

20.14 The Manager who made the decision to dismiss is responsible for presenting the Council's case to the Appeal Panel. He/she should:

- Produce a Statement of Case for presentation at the Appeal Hearing by the required deadline. A copy will then be given to the employee, the Appeal Panel and its advisor.
- Inform the Head of Legal and Democratic Services (or representative) of anyone who they intend to call as a witness.
- Ensure that they have support from Human Resources at the Appeal Hearing.
- Arrange, if applicable, the attendance of any witness(es) at the Appeal Hearing.

Employee

20.15 The employee is responsible for:

- Producing a Statement of Case for presentation at the Appeal Hearing by the required deadline. A copy will then be given to the manager, the Appeal Panel and its advisor.
- Informing, if applicable, the Head of Legal and Democratic Services (or their representative) of anyone they intend to call as a witness
- Ensuring that any representative attends the Appeal Hearing.
- Arranging, if applicable, the attendance of any witness(es) at the Appeal Hearing.

Appeal Panel

20.16 The Appeal Panel through the elected Chair has the following responsibilities:

- Ensuring that the Appeal Hearing is conducted in line with the procedure outlined in Annexe B. New information (i.e. information that is not included in the submitted Statement of Case) cannot be introduced and heard at the Hearing. If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree.
- Informing the employee at the Appeal Hearing, if this is practicable, of the Panel's decision, the reason(s) for this decision.

- Confirming the decision in writing to the employee and manager. This should be done by no later than 5 working days after the Appeal Hearing.

20.17 The decision of the Appeal Panel is final and there will be no further right of appeal.

21.0 REVIEW OF THE PROCEDURE

21.1 The Capability Procedure may be reviewed at anytime in consultation with the appropriate trade unions.

21.2 As a minimum the procedure will be reviewed every two years.

21.3 Human Resources has authorisation to make minor amendments to the procedure arising out of any organisational restructure (e.g. post title changes).

SOUTH DERBYSHIRE DISTRICT COUNCIL

CAPABILITY PROCEDURE

CONDUCT OF APPEAL HEARING BY A DIRECTOR (ACTION SHORT OF DISMISSAL)

1. The Director will chair the Appeal Hearing.
2. The Advisor (Head of Human Resources or representative) to the Chair will outline procedures to all parties present.
3. The appellant (or representative) shall put the case in the presence of the management representative and may call witnesses.
4. The management representative may ask questions of the appellant and/or representative and witnesses who may be called on evidence given.
5. The Chair or Advisor may ask questions of the appellant and/or representative and any witnesses who may be called on evidence given.
6. The management representative shall put the case in the presence of the appellant and his/her representative and may call witnesses.
7. The appellant (or representative) may ask questions of the management representative and witnesses who may be called on the evidence given.
8. The Chair or Advisor may ask questions of the management representative and witnesses on evidence given.
9. The management representative should have the opportunity to sum up their case if they so wish.
10. The appellant (or representative) should have the opportunity to sum up their case if they so wish.
11. The Chair, with the Head of Human Resources (or representative) acting as Advisor on procedural/employment matters, should deliberate in private, recalling the management representative and the appellant only to clear points of uncertainty in evidence already given. If recall is necessary, both parties are to return, notwithstanding only one may be asked to give clarification on the point of uncertainty.
12. The Chair should announce the decision to the parties personally, on the same day if possible, then in writing by no later than 5 working days after the Appeal Hearing.

Notes:

1. Both parties must be present at all times when the Appeal Panel hears evidence.
2. Any witnesses called must withdraw after they have presented their evidence.
3. New information (i.e. information that is not included in a submitted Statement of Case) cannot be introduced and heard at the Appeal Hearing. If either side attempt to introduce new information, the Chair will not allow its consideration unless both parties agree.

SOUTH DERBYSHIRE DISTRICT COUNCIL

CAPABILITY PROCEDURE

CONDUCT OF APPEAL HEARING BY PANEL FROM THE LICENSING AND APPEALS COMMITTEE (DISMISSAL ONLY)

1. A member of the Appeal Panel will be chosen to Chair the Appeal Hearing.
2. The Advisor to the Appeals Panel (Head of Legal and Democratic Services or representative will outline procedures to all parties present.
3. The appellant (or representative) shall put the case in the presence of the management representative and may call witnesses.
4. The management representative may ask questions of the appellant and/or representative and witnesses who may be called on evidence given.
5. The Appeal Panel may ask questions of the appellant and/or representative and any witnesses who may be called on evidence given.
6. The management representative shall put the case in the presence of the appellant and his/her representative and may call witnesses.
7. The appellant (or representative) may ask questions of the management representative and witnesses who may be called on the evidence given.
8. The Appeal Panel may ask questions of the management representative and witnesses on evidence given.
9. The management representative should have the opportunity to sum up their case if they so wish.
10. The appellant (or representative) should have the opportunity to sum up their case if they so wish.
11. The Appeal Panel, with the Head of Legal and Democratic Services (or representative) acting as Clerk/Advisor on procedural/employment matters, should deliberate in private, recalling the management representative and the appellant only to clear points of uncertainty in evidence already given. If recall is necessary, both parties are to return, notwithstanding only one may be asked to give clarification on the point of uncertainty.
12. The Appeal Panel should announce the decision to the parties personally, on the same day if possible, then in writing by no later than 5 working days after the Appeal Hearing.

- Notes:
1. Both parties must be present at all times when the Appeal Panel hears evidence.
 2. Any witnesses called must withdraw after they have presented their evidence.
 3. New information (i.e. information that is not included in a submitted Statement of Case) cannot be introduced and heard at the appeal hearing. If either side attempt to introduce new information, the Appeal Panel will not allow its consideration unless both parties agree.

