

ARMAGH BANBRIDGE CRAIGAVON DISTRICT COUNCIL

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AMENDMENT RECORD SHEET

Remove and destroy old pages. Insert new pages as indicated.

Revision Number	Page Number	Date Revised	Description of Revision

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INTRODUCTION

- 1.1 The continued success of the Council is dependent on employees achieving and maintaining high standards of performance in their roles.
- 1.2 The Council is committed to providing the necessary support to meet its standards of performance.
- 1.3 The main objective of this procedure is to enable the Council to deal with cases where an employee is lacking in some area of knowledge, skill or aptitude and is consequently unable to carry out the required duties of his/her job to an acceptable standard.

2. CONTEXT

- 2.1 This procedure is compliant with current legislation and reflects Labour Relations Agency (LRA) guidelines on best practice.
- 2.2 Consideration has been given to the provisions of the Disability Discrimination Act 1995, in particular, making reasonable adjustments when dealing with capability issues.

3. SCOPE

- 3.1 This procedure applies to all employees of the Council with the exception of the following who are covered by a separate procedure for dealing with capability issues:
 - The Chief Executive (JNC Agreement on Discipline, Capability and Redundancy)
 - Staff employed under JNC conditions of service for Chief Officers of Local Authorities
 - Employees still in their probationary period
- 3.2 This procedure is to be used in cases where there is a lack of ability rather than a deliberate failure to perform to the standards of work of which the employee is capable.

4. GENERAL PRINCIPLES

- 4.1 Where 'the manager' is referred to under this policy this refers to the immediate supervisor / line manager.
- 4.2 Managers will attempt to resolve issues of employee under performance on an informal basis before invoking formal procedures.
- 4.3 Deliberate failure to perform will be dealt with under the Disciplinary procedure.
- 4.4 This procedure does not address medical incapability / disability which is dealt with separately under the Council's attendance policy and procedure.
- 4.5 A genuine lack of capability may be due to various factors eg change of job content, lack of skill or aptitude when new technology is introduced or personal difficulties which are having an impact on the employee's ability to carry out their duties.
- 4.6 Employees have a contractual responsibility to perform to a satisfactory level and will be given every help and encouragement to do so.
- 4.7 If English is not an employee's first language, or if the employee has difficulty reading, the content of any capability related letter can be explained orally. Letters can also be made available in other clear formats, such as large print, where necessary. An interpreter can also be arranged to facilitate attendance at capability meetings. To arrange any of these options an

employee must approach a member of Human Resources Section within 3 working days of receiving the correspondence. (For the purpose of this procedure “working days” are those from Monday to Friday inclusive, excluding statutory holidays).

- 4.8 Managers should ensure that this Capability Procedure is applied in a fair and consistent manner. They are also responsible for developing a culture in which employees are supported and assisted in achieving the required standards of performance. This includes setting realistic and measurable standards, supporting employees in reaching them (through training, mentoring, coaching etc) and taking appropriate action within the procedures when they are not being met.

5. INFORMAL STAGE

- 5.1 Performance problems are most effectively dealt with at an early stage. Initial identification of an employee’s apparent lack of capability should be raised at normal regular supervision or performance management meetings, or a specific meeting may be arranged if the issue is identified at a time when a regular meeting is not planned. In most cases discussion or coaching meetings between the manager and the employee will resolve any issues informally and such discussion will often bring about a more satisfactory resolution than formal action.
- 5.2 The manager must explain clearly the facts of the capability issue and express his/her concerns.
- 5.3 The employee must be given a full opportunity to respond and explain any factors affecting his/her capability levels. If any underlying medical or disability issues are suggested, it may be appropriate to refer the employee to Occupational Health who can provide specialist advice on managing and accommodating health issues and making reasonable adjustments for disability issues.
- 5.4 The manager must be sensitive to the fact that unless otherwise identified, issues of capability are not disciplinary in nature, and that the correct approach is therefore one of constructive support, guidance, coaching and encouragement.
- 5.5 The manager should make the employee aware of any available counselling service to enable them to receive confidential support.
- 5.6 The manager should provide the employee with a copy of the Capability Procedure.
- 5.7 If the manager feels that the initial meeting will resolve the issue then he/she and the employee can agree any actions and review as appropriate.
- 5.8 If as a result of the initial meeting the manager decides that there is a capability issue and the Informal Capability Procedure should be instigated he/she should develop an improvement plan with the employee, clearly setting out specific targets and dates for improvement in conjunction with advice from HR.
- 5.9 After the meeting the manager should summarise the outcome of the discussion in writing to the employee including:
- A clear statement of the employee’s present level of capability and an explanation of why this is not satisfactory
 - The required level of improvement as discussed (in measurable terms such as quantity, quality, frequency, timing etc)

- The time period within which the specified improvement must be made (usually between 2 and 4 months)
 - How management will assist the employee to meet the specified performance levels
 - What action may follow if the employee fails to achieve the specified performance levels during the informal review period
 - The date(s) of the informal review meeting(s).
- 5.10 During the agreed monitoring period, the manager will meet with the employee at specified intervals (eg weekly, monthly etc) to provide feedback on their progress and to update targets/objectives within the improvement plan where appropriate.
- 5.11 Where performance has reached the required standards a final informal meeting should be held to confirm the outcome of the review, to agree standards expected from the employee moving forward. An agreement to maintain the standard of performance should be made, including how this will be measured.
- 5.12 It is the manager's responsibility to record and keep details of all meetings with the employee within the procedure, and any targets, mentoring and support provided.
- 5.13 If the performance remains unsatisfactory the employee should be invited to a Formal Capability Meeting.

6. FORMAL STAGES

6.1 Right to be accompanied

At all stages of the formal procedure the employee is entitled to be accompanied by a work colleague or a recognised trade union representative.

- Where the employee is also a trade union representative, he/she will have the right to be accompanied by a senior trade union representative.
- No action will be taken in respect of a trade union representative until a senior trade union representative or full time official has been made aware of the circumstances.

6.2 Stage 1 – Formal Capability Meeting (FCM)

At the outset the line manager should discuss the issue of underperformance with Human Resources and get advice on moving forward with the formal process.

The line manager should write to the employee asking him/her to attend a Formal Capability Meeting giving at least 10 working days' notice. This letter should include:

- A statement of the employee's alleged capability problem
- The improvement plan (if applicable from a previous informal stage in the process)
- A record of monitoring/progress to date
- The date, time and location of the meeting
- The employee's right to be accompanied at the meeting by a work colleague or recognised trade union representative (informing the employee that it is his/her responsibility to arrange

such representation)

- That the manager will be accompanied at the meeting by a representative from the Human Resource Department
- That notes of the meeting will be taken. All records and notes will be treated as confidential and will be kept no longer than necessary in accordance with the Data Protection Act 1998.

Any documentation which the manager or the employee/representative wishes to have considered at the meeting should be exchanged at least 3 working days before the meeting date.

The following should be discussed at the meeting:

- A review of the monitoring period and support given
- The shortfall in performance
- Agreement of the improvement plan and further targets
- What further training and support is required and can be provided
- Consideration of any extenuating circumstances that may be affecting the employee's performance
- Establishment of the Stage 2 Formal Capability Meeting date (in 2 to 4 months) and interim review meetings (at least 2)
- The employee should be forewarned that the level of performance is not acceptable and that failure to improve could lead to further action being taken against them.

6.3 The manager, in consultation with Human Resources, will write to the employee within 5 working days of the meeting to confirm the outcome. The letter will indicate as appropriate:

- the expected improvements, including targets to be met
- any further re-training required
- the timescale for improvement and dates of review meetings for the new monitoring period
- the possible outcome if the necessary improvements are not achieved within the specified timescale including progression to stage 2 of the procedure
- that they are being issued with a first written notice which will be recorded on their file for 6 months and that failure to improve could lead to further action being taken against them
- the right of appeal in writing within 5 working days.

6.4 During the monitoring period, review meetings should be held as in the informal stage. A copy of the first written notice should be kept on file and used as the basis for monitoring and reviewing performance over the specified timescale.

6.5 Stage 2 – Formal Capability Meeting (FCM)

A letter inviting the employee to the meeting will set out the objectives agreed at the first meeting and which will be reviewed at this meeting. The employee will be reminded that if performance is still unsatisfactory, then the outcome may be a final written notice. This letter will be sent out prior to the meeting giving the employee 10 full working days' notice.

At this formal review meeting the line manager will discuss progress with the employee and inform them of the outcome of the review period.

Possible outcomes are:

- The employee has reached, or is shortly expected to reach, the specified levels of performance and no further formal action is necessary, or
- The employee has not reached the specified levels of performance.

6.6 The employee will be told whether he or she has reached the required standard of performance. If the standard is reached no further action will be taken. The outcome will be confirmed in writing.

6.7 If the employee has not reached the specified levels of performance the shortfalls will be explained clearly and discussed again. Consideration will be given to any extenuating circumstances that may be affecting the employee's performance.

The manager will set and agree revised objectives with the employee along with a new timescale for improvement and a formal review date and meeting. This will be confirmed in writing within 5 working days and incorporated into a new improvement plan.

6.8 If some or all of the performance continues to be unsatisfactory, the manager will explain clearly to the employee the shortfall between the performance and the standard required.

6.9 In such cases at this stage the employee will be issued with a second written notice which will set out:

- The performance problem(s) identified
- Action taken to date
- The decision that a second written notice is being given and that it will be recorded on the employee's file for twelve months
- The improvement (realistic and where possible, measurable) that is required
- A reasonable timescale for achieving this improvement
- A review date and the likely outcome if no improvement takes place
- Any identified measure of support the employer will provide to assist the employee in meeting the required standards
- That the second written notice represents the second stage of a formal procedure and will be recorded on their file for 12 months
- That their job remains at risk and that an alternative job role may be looked at, if available and failure to improve could lead to dismissal
- The right to appeal.

A copy of the final written notice should be kept and used as the basis for monitoring and reviewing performance over the specified timescale.

6.10 Stage Three – Final Formal Capability Meeting (FFCM)

On completion of the timescale specified at the Stage 2 FCM a letter inviting the employee to a FFCM will set out the objectives agreed at the Stage 2 meeting and to be reviewed at this meeting. The employee will be reminded that if performance is still unsatisfactory, then the outcome may be a final written notice. This letter will be sent out prior to the meeting giving the employee 10 days' notice and will include:

- a clear statement of the employee's alleged capability problem and the improvement plan
- a record of monitoring/progress to date
- the date, time and location of the hearing
- the name of the senior manager who will chair the hearing
- the employee's right to be accompanied by a work colleague or trade union representative
- any documentation that management wishes to submit to the hearing and the names of any witnesses or employees that management wishes to call
- a request that the employee submits to the Human Resource Department 3 working days before the hearing any documentation which he/she wishes to submit and the names of any witnesses he/she wishes to call
- the employee should be informed that a decision may be taken to issue a final written notice on the grounds of capability and that they will have a right of appeal against any action taken.

The case will be heard by and a Senior Officer of representative and a representative from Human Resource Department.

The employee will be told whether he or she has now reached the required standard of performance. If the standard is reached, then no further action will be taken and the employee will be informed of the outcome in writing.

If the employee has failed to reach the required standard, the manager involved will outline exactly where he/she has failed. The employee will have the opportunity to respond and outline any reasons for the shortfall.

- 6.11 If the standard of performance has been deemed to be unsatisfactory then the employee will be issued with a final written notice. The notice will be confirmed in writing within five working days, signed by the person who chaired the FFCM.

The final written notice will set out:

- the performance problems still remaining
- action taken to date
- the decision that a final written notice is given is being given and that it will be recorded on their file for 12 months
- the improvement that is required
- a reasonable timescale for achieving this improvement

- a review date
- any identified measure of support the employer will provide to assist the employee in meeting the required standards
- that the final written notice represents the final stage of a formal procedure and failure to improve could lead to dismissal
- the right to appeal within 5 days

A copy of the final written notice should be kept and used as the basis for monitoring and reviewing performance over the specified timescale.

6.12 Formal Capability Hearing

If an employee's performance is still unsatisfactory and the employee fails to reach the prescribed standards dismissal will normally result or redeployment including the option to downgrade. A hearing will be conducted, usually by a more senior manager/Director or nominee than the one who has handled the case to this stage.

The Director or nominee conducting the hearing (accompanied by an HR Representative) will consider the facts of the case and may decide to dismiss. If a decision to dismiss is made the employee will be notified in writing, and by Recorded/signed for mail within 5 working days. The dismissal letter will include the following information:

- the reason for dismissal
- the period of notice and arrangements for completion of such notice
- the date on which the employment will terminate
- the employee's right to appeal against the decision and that any appeal should be submitted within 5 working days

As an alternative to dismissal the Council may give consideration (if the employee possesses the necessary skills, qualifications, ability and knowledge) to whether the Employee can be redeployed to a more suitable role should a post be available.

7. ATTENDANCE AT A REVIEW MEETING OR HEARING

- 7.1 Employees must take all reasonable steps to attend any meeting organised under this procedure.
- 7.2 If the employee is unable to attend due to sickness or some other reason, or if their representative is unable to attend, the meeting may be postponed and will be rearranged within 5 days or as soon as is practicable. The employee will be notified of the revised date in writing and will be advised that if they are not able to attend on the revised date then their case and/or representation by the trade union representative will be considered based on their written documentation.

8. APPEALS

- 8.1 Employees have the right to appeal the decision at each stage of this procedure. The outcome of the appeal is final. All appeals must be made to the manager specified within the letter in writing within 5 working days of being informed of the decision, stating the grounds of the appeal. If an appeal is not lodged within 5 working days it is assumed that the employee accepts the decision.
- 8.2 Appeal hearings shall be held within 10 working days of receipt of appeal and Council will provide at least 10 working days' notice of the date of the appeal. The employee will be advised of the date, time and location of the appeal hearing, their right to be accompanied (by a work colleague from the Council or an accredited Trade Union representative) and the name of the person hearing the appeal.
- 8.3 Copies of any documents that an employee will rely on during an appeal must be submitted 3 working days in advance to the person hearing the appeal.
- 8.4 At the appeal hearing the Council will be represented by an Officer of appropriate seniority usually a Director or nominee who has not previously been involved with the case.
- 8.5 The appeal will take the form of a re-hearing and will usually be limited to the grounds set out by the employee in their written appeal request.
- 8.6 The outcome of the appeal hearing will be notified to the employee within 5 working days of the appeal hearing. Where it is not possible to provide a full report of the appeal hearing within 5 working days the employee should be notified of the decision and advised that a full report will follow as soon as possible.
- 8.7 It will be made clear to the employee that the Appeal Officer's decision is final.

9. SERIOUS INCAPABILITY

- 9.1 Where an employee makes an error of a fundamental nature which calls into serious question his/her competence to conduct the duties of the post it may not be appropriate to invoke the normal stages of the capability procedure. Instead the principles and procedures for gross misconduct as outlined in the Disciplinary Policy and Procedure should be followed, including a full investigation. In such cases the Council reserves the right to place the employee on precautionary suspension with pay to enable a full investigation to take place.

- 9.2 If the error was not found to be wilful it is recommended that the capability procedure be used, but it should be noted that it may be appropriate to move straight to stage 3 of the capability procedure in cases where a serious question has been raised regarding the employee's overall competence for the job.

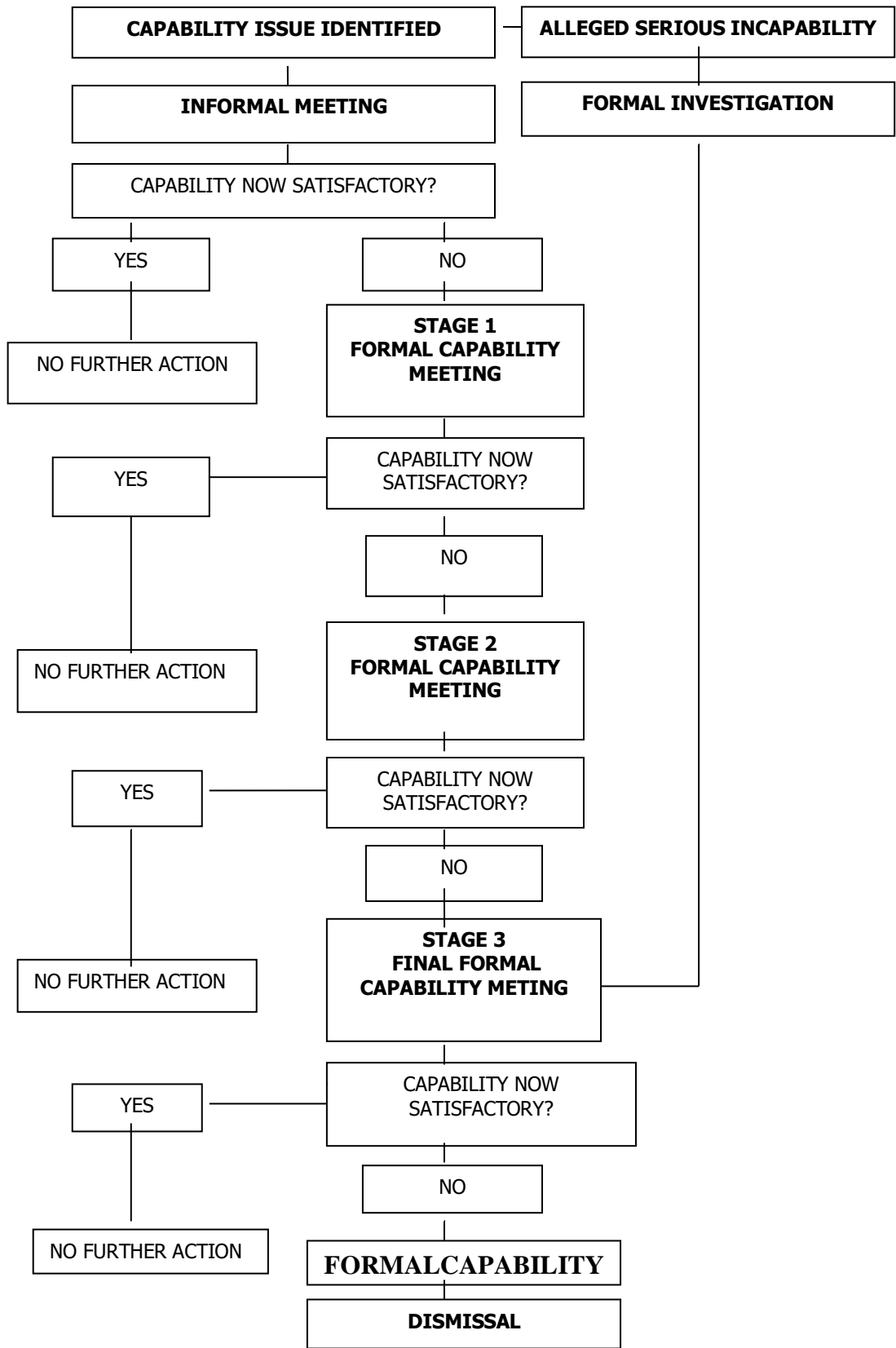
10. GRIEVANCES

- 10.1 In the course of managing capability under this procedure an employee might raise a grievance about an issue which is related to the case. If this happens the manager will deal with both issues concurrently.
- 10.2 In exceptional situations the Council may suspend the Capability process whilst the grievance is dealt with.

11. REVIEW

- 11.1 This procedure will be reviewed regularly by the Council and, if necessary, revised in consultation with recognised Trade Unions in light of changing legislation and the LRA Code of Practice.

APPENDIX A: CAPABILITY PROCEDURE FLOWCHART



NB: RIGHT OF APPEAL AT EACH FORMAL STAGE

Policy Screening Form

Policy Scoping

Policy Title: Capability Procedure

Brief Description of Policy (please attach copy if available). Please state if it is a new, existing or amended policy.

The continued success of the Council is dependent on employees achieving and maintaining high standards of performance in their roles.

The Council is committed to providing the necessary support to meet its standards of performance.

The main objective of this procedure is to enable the Council to deal with cases where an employee is lacking in some area of knowledge, skill or aptitude and is consequently unable to carry out the required duties of his/her job to an acceptable standard.

This is a new policy.

Intended aims/outcomes. What is the policy trying to achieve?

The main aim of the policy is to enable the Council to deal with cases where an employee is lacking in some area of knowledge, skill or aptitude and is consequently unable to carry out the required duties of their job to an acceptable standard.

Policy Framework

Has the policy been developed in response to statutory requirements, legal advice or on the basis of any other professional advice? Does this affect the discretion available to Council to amend the policy?

The procedure has been developed in conjunction with the Local Government Reform Joint Forum and the Local Government Staff Commission

Are any Section 75 categories which might be expected to benefit from the policy? If so, please outline.

There is no specific impact on any equality category.

Who initiated or wrote the policy (if Council decision, please state). Who is responsible for implementing the policy?

Who initiated or wrote policy?
HR Working Group

Who is responsible for implementation?
The Council will implement the new policy

Are there any factors which might contribute to or detract from the implementation of the policy (e.g. financial, legislative, other)?

Capability Procedure

N/A

Main stakeholders in relation to the policy

Please list main stakeholders affected by the policy (e.g. staff, service users, other statutory bodies, community or voluntary sector, private sector)

- This procedure applies to all employees of the Council with the exception of the following who are covered by a separate procedure for dealing with capability issues:
- The Chief Executive (JNC Agreement on Discipline, Capability and Redundancy)
 - Staff employed under JNC conditions of service for Chief Officers of Local Authorities
 - Employees still in their probationary period.

Are there any other policies with a bearing on this policy? If so, please identify them and how they impact on this policy.

Available Evidence

Council should ensure that its screening decisions are informed by relevant data. What evidence/information (both qualitative and quantitative) have you gathered to inform this policy? Specify details for each of the Section 75 categories.

Section 75 category	Evidence
Religious belief	There is no evidence/information that the policy has an impact on any Section 75 category
Political opinion	
Racial group	
Age	
Marital status	
Sexual orientation	
Men and women generally	
Disability	
Dependants	

Needs, experiences and priorities

Taking into account the information gathered above, what are the different needs, experiences and priorities of each of the following categories in relation to this particular policy/decision?

Section 75 category	Needs, experiences and priorities
Religious belief	There is no evidence/information that the policy has an impact on any Section 75 category
Political opinion	

Capability Procedure

Racial group	
Age	
Marital status	
Sexual orientation	
Men and women generally	
Disability	
Dependants	

Screening Questions

1. What is the likely impact on equality of opportunity for those affected by this policy for each of the Section 75 categories?

Category	Policy Impact	Level of impact (Major/minor/none)
Religious belief	There are no specific impacts on any of the equality categories.	None
Political opinion		
Racial group		
Age		
Marital status		
Sexual orientation		
Men and women generally		
Disability		
Dependents		

2. Are there opportunities to better promote equality of opportunity for people within the Section 75 categories?

Category	If yes, provide details	If no, provide reasons
Religious belief	There are no specific impacts on any of the equality categories.	No
Political opinion		
Racial group		
Age		
Marital status		
Sexual orientation		
Men and women generally		
Disability		
Dependents		

3. To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion, or racial group?

Category	Details of Policy Impact	Level of impact (major/minor/none)
Religious belief		None
Political opinion		
Racial group		

4. Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

Category	If yes, provide details	If no, provide reasons
Religious belief		No
Political opinion		
Racial group		

Multiple Identity

Generally speaking, people fall into more than one Section 75 category (for example: disabled minority ethnic people; disabled women; young Protestant men; young lesbian, gay and bisexual people). Provide details of data on the impact of the policy on people with multiple identities. Specify relevant s75 categories concerned.

No specific impacts have been identified for people with multiple identity. The policy will affect all employees regardless of what equality category they fall within.

Disability Discrimination (NI) Order 2006

Is there an opportunity for the policy to promote positive attitudes towards disabled people?

N/A

Is there an opportunity for the policy to encourage participation by disabled people in public life?

N/A

Screening Decision

A: NO IMPACT IDENTIFIED ON ANY CATEGORY – EQIA UNNECESSARY

Please identify reasons for this below

The main objective of this procedure is to enable the Council to deal with cases where an employee is lacking in some area of knowledge, skill or aptitude and is consequently unable to carry out the required duties of his/her job to an acceptable standard.

The procedure was written in conjunction with the Local Government Reform Joint Forum and the Local Government Staff Commission and is compliant with current legislation and reflects Labour Relations Agency guidelines on best practice.

B: MINOR IMPACT IDENTIFIED – EQIA NOT CONSIDERED NECESSARY AS IMPACT CAN BE ELIMINATED OR MITIGATED

Where the impact is likely to be minor, you should consider if the policy can be mitigated or an alternative policy introduced. If so, EQIA may not be considered necessary. You must indicate the reasons for this decision below, together with details of measures to mitigate the adverse impact or the alternative policy proposed.

C: MAJOR IMPACT IDENTIFIED – EQIA REQUIRED

If the decision is to conduct an equality impact assessment, please provide details of the reasons.

Timetabling and Prioritising

If the policy has been screened in for equality impact assessment, please answer the following questions to determine its priority for timetabling the equality impact assessment.

On a scale of 1-3 with 1 being the lowest priority and 3 being the highest, assess the policy in terms of its priority for equality impact assessment.

Priority criterion	Rating (1-3)
Effect on equality of opportunity and good relations	
Social need	
Effect on people's daily lives	

The total rating score should be used to prioritise the policy in rank order with other policies screened in for equality impact assessment. This list of priorities will assist the council in timetabling its EQIAs.

Is the policy affected by timetables established by other relevant public authorities? If yes, please give details.

As the policy is agreed in principle the policy will be looked at again in 6 months then reviewed annually.

Monitoring

Effective monitoring will help the authority identify any future adverse impact arising from the policy. It is recommended that where a policy has been amended or an alternative policy introduced to mitigate adverse impact, monitoring be undertaken on a broader basis to identify any impact (positive or adverse).

Further information on monitoring is available in the Equality Commission's guidance on monitoring (www.equalityni.org)

Identify how the impact of the policy is to be monitored

Approval and Authorisation

A copy of the screening form for each policy screened should be signed off by the senior manager responsible for that policy. The screening recommendation should be reported to the relevant Committee/Council when the policy is submitted for approval.

Screened by	Position/Job title	Date
Aisling Knipe	Head of HR	26.02.15
Approved by	Position/Job Title	Date
Roger Wilson	Chief Executive	February 2015

Please forward a copy of the completed policy and form to:

mary.hanna@armaghbanbridgecraigavon.gov.uk who will ensure these are made available on the Council website.

The above officer is also responsible for issuing reports on a quarterly basis on those policies “screened out for EQIA”. This allows stakeholders who disagree with this recommendation to submit their views. In the event of any stakeholder disagreeing with the decision to screen out any policy, the screening exercise will be reviewed.