



Gateshead Council

Pay Policy Statement 2019/20

Introduction

1. This document sets out Gateshead Council's pay policy in relation to the remuneration of its staff in accordance with section 38(1) of the Localism Act 2011. The policy reflects the Council's consideration of the Guidance issued by the former Department for Communities and Local Government under Section 40 of the Act and is subject to review and changes approved by the Council. The policy will be published on the Council's website as soon as reasonably practicable after approval or amendment.
2. The key principles of the Council's pay policy are set out below and are effective from 1 April 2019. The policy includes commentary upon:
 - The general principles that underpin the Council's approach to its pay policy;
 - Definitions of the 'lowest paid employees' and 'chief officers' for the purposes of pay comparison;
 - The relationship between the remuneration of chief officers, average pay, and the remuneration of the lowest paid employees; and
 - The re-employment of former employees who left the Council with enhanced retirement and redundancy benefits.
3. The policy also includes discretion for the Strategic Director, Corporate Services & Governance, in the interpretation and application of nationally agreed terms and conditions of employment to Gateshead Council employees.
4. The arrangements set out within this document do not extend to those members of staff who are employed within schools, which are matters for the schools' discretion.
5. The salaries quoted in the pay policy reflect the current NJC Green Book pay award which will be implemented with effect from 1 April 2019 as follows:
 - The pay award for 2019 is a 2% increase of salary for SCPs 23 (formerly SCP 28) and above with bottom-loading for SCPs 1 - 6 (formerly SCPs 6 -28).
 - A revised national pay spine to address the compacting of differentials at the lower end of the pay spine based on the following:
 - A bottom rate of £9.00 per hour
 - 'Pairing off' old SCPs 6-17 to create new SCPs 1-6
 - Equal steps of 2% between each new SCPs 1 to 21 inclusive (equivalent to old SCPs 6-28 inclusive)

The Council's revised pay scale is shown at Annexe 1.

General principles regarding employee pay

6. This pay policy provides a basis on which Gateshead Council can compete in labour markets at all levels and for all roles, enabling the Council to attract, retain, and fairly reward people with the knowledge, experience, skills and attributes that are essential to the effective delivery of services to residents, businesses, and other stakeholders in Gateshead.
7. Gateshead Council is mindful of its obligations as an equal opportunities employer, and wants to ensure that people are treated fairly and with respect in all its activities and processes. The Council aims to be an organisation that recruits and retains a diverse and skilful workforce from the local community and beyond, and its approach to the pay and conditions of its workforce is intended to support this objective.
8. In supporting the aim of ensuring equality and transparency in its pay practices, the Council recognises the role of trade unions and employee representatives in consultation and negotiation within a process of free collective bargaining. It supports the national machinery for negotiation of terms and conditions of employment and applies the agreements reached in the various Joint Councils.
9. The Strategic Director, Corporate Services & Governance, following consultation with the Leader of the Council, the Strategic Director, Corporate Resources, and (if deemed appropriate by him/her) having taken advice from the LGA and/or Employers' Organisation, has the discretion to interpret and apply national agreements if the subject matter is not specifically covered by the pay policy.
10. Gateshead Council's main (NJC) pay and grading structure has been developed by creating grades around the national 'spinal column' of salary points. The grades allocated to particular posts in Gateshead Council are determined by job evaluation (JE) of the posts, with jobs of the same JE size being allocated to the same grade.
11. The Council's graded pay structures include scope for service-based incremental advancement in every case except for the Chief Executive, who is paid a spot salary of £168,014, and employees at Grades A (SCP 2), B (SCP 3) and C (SCP 4), who are paid a spot salary of £17,711, £18,065 and £18,426 respectively. For all other employees, increments are paid on 1st April each year until they reach the top of their grade, subject to the following qualifications:
 - Increments may be accelerated within an employee's grade at the discretion of the authority (exercisable by the Strategic Director, Corporate Services & Governance at the request of the employee's Service or Strategic Director) on the grounds of special merit or ability, subject to the maximum of the grade not being exceeded.
 - An increment may be withheld by a Service Director following an adverse report on an employee. Any withheld increment may be paid subsequently if the employee's services become satisfactory.
 - Employees with less than six months' service in the grade by 1 April are granted their first increment six months after their appointment, promotion or re-grading: except where their salary on the 1 April would be less than one SCP in excess

of the salary they would have received on that day had they remained on their previous grade, when they will be entitled to their increment on 1 April.

12. New appointments are subject to the Council's recruitment and selection policies and will generally be made at the bottom spinal column point of all pay bands unless there are special circumstances that objectively justify payment at a higher level within the grade, as determined by the Strategic Director, Corporate Services & Governance. An example would be where the appointment is made at a higher level within the grade in order to show a material improvement upon the employee's previous salary, where appropriate.
13. The Council operates a recruitment and retention allowances policy which is shown at annexe 2. This allows a market supplement to be applied on top of basic salary in order to attract applicants of the right calibre, and to retain employees with necessary skills and experience. A market supplement can only be approved by the Strategic Director, Corporate Services & Governance and is subject to review.
14. In the event of any employee securing a higher-graded post via internal promotion/recruitment and there being an overlap of spinal column points between their current post and bottom point of the newly secured position, the Council will generally pay salary on a higher spinal column point.
15. Arrangements exist to protect for a limited period the basic pay of employees who are appointed for various reasons to posts with a lower substantive salary. These arrangements are set out in the Council's policies covering redundancy, re-structuring, redeployment, ill health and disability, and bullying and harassment.
16. There may from time to time be situations where employees are transferred into the Council from other organisations which have different pay and conditions. The employees' terms and conditions on transfer may be subject to protection under TUPE or TUPE-like arrangements, and as such may be outside the Council's main pay structure until such time as it is possible for them to be integrated.
17. Various pay enhancement arrangements are in place to reflect non-standard working patterns at a local operational level or in recompense for taking on additional duties and responsibilities.
18. The Council does not operate performance bonus payment schemes at any level of the organisation.

The Minimum Wage; the National Living Wage; and the UK Accredited Living Wage - Lowest Paid Employees and Chief Officers

Minimum Wage, National Living Wage, UK Accredited Living Wage:

19. The statutory Minimum Wage for employees over 21 is £7.70 per hour; the statutory National Living Wage (NLW) for employees aged 25 is £8.21 per hour from 1 April 2019.
20. The Council remains committed to reviewing low pay and as a result of implementing the new national pay spine and applying the 2019 pay award the Council is as an employer who matches pay rates with the UK Living Wage as the

Council's lowest grade (£9.18 per hour) is above the current UK Living Wage rate outside of London of £9 per hour.

Lowest-paid employees:

21. 'Lowest paid employees' is defined as those full-time employees in jobs paid at Grade A at spinal column point 2. It excludes apprentices, whose pay remains subject to other regulations or conditions, and has specific treatment under this policy.
22. Spinal column point 2, at £9.18 per hour from 1 April 2019, is £0.97 per hour more than the National Living Wage and £0.18 per hour more than the UK Accredited Living Wage (outside London).
 - Annual salary at spinal column point 2 is currently £17,711.
 - The mode (i.e. most frequently used) salary for full-time employees falls within Grade D, the maximum of which is £19,171.
 - The median average salary for full-time employees, excluding overtime and any other additional payments, is £21,166.

Chief Officers:

23. 'Chief Officer' is defined in the Localism Act 2011 as:
 - the head of the authority's paid service designated under section 4(1) of the Local Government and Housing Act 1989;
 - the monitoring officer designated under section 5(1) that Act;
 - any statutory chief officer mentioned in section 2(6) of that Act;
 - any non-statutory chief officer mentioned in section 2(7) of that Act; and
 - any deputy chief officer mentioned in section 2(8) of that Act.

Under the above provisions, 'statutory chief officer' includes:

- the person having responsibility, for all statutory purposes (inc. section 151 of the Local Government Act 1972), for the administration of the authority's financial affairs;
- the Director of Children's Services appointed under section 18 of the Children Act 2004;
- the Director of Adult Social Services appointed under section 6(A1) of the Local Authority Social Services Act 1970; and
- the Director of Public Health appointed under section 73A(1) of the National Health Service Act 2006.

'non-statutory chief officer' includes:

- a person for whom the head of the authority's paid service is directly responsible;
- a person who in relation to most of their duties is required to report direct or is directly accountable to the head of paid service and any person who similarly is required to report direct or is directly accountable to the authority or its committees.

24. The Council applies the terms and conditions of the Joint Negotiating Committee (JNC) for Chief Officers to all officers included in paragraph 23, above, and has therefore determined that the following roles identified in the Council's Constitution to be 'chief officers' for the purposes of this policy:

- the Chief Executive
- Strategic Directors
- the Director of Public Health
- the Deputy Strategic Director, Corporate Finance
- Service Directors
- Consultants in Public Health

25. The Chief Executive is paid on a fixed salary point of £168,014p.a.

26. The current ratio of lowest paid employee to highest paid employee is therefore slightly less than 1:10.

27. Strategic Directors are all paid on the same pay band, which is:

Step1	Step 2	Step 3	Step 4	Step 5
£99,844	£104,979	£108,217	£113,787	£119,472

28. All other chief officer posts are paid on one of three pay bands which are:

	Step 1	Step 2	Step 3	Step 4	Step 5
Service Director Band 1	£80,910	£85,071	£89,448	£94,048	£98,884
Service Director Band 2	£66,513	£69,933	£73,531	£77,316	£81,291
Service Director Band 3	£58,517	£61,530	£64,697	£68,022	£71,521

29. Salaries in the pay bands at paragraphs 27 and 28 are subject to any general increase agreed at the JNC for Chief Officers, and in the case of the Chief Executive, the JNC for Chief Executives. A pay increase for the Chief Executive and Chief Officers of 2% was effective from 1 April 2019 and is included in the table above.

30. General increases for other employees are mainly determined by the National Joint Council, although different national bargaining arrangements are in place for a small number of occupational groups such as craft trades, youth & community workers and educational psychologists.

31. It is a recommendation of the DCLG¹ that Full Council should be offered the opportunity to vote before a salary of £100,000 or more is offered in respect of a new appointment. In Gateshead, all new appointments to chief officer posts are made in accordance with the pay bands identified within this statement, which includes those in excess of £100,000. Any proposed variation to the application of this policy in this regard (or of the Recruitment and Retention Policy) will be reported to Full Council. Of those Chief Officer posts whose salary exceeds £100,000 the following arrangements apply under the Council's Constitution: the appointment of the Chief Executive is approved by Full Council, while Strategic Directors are appointed by the Council's Special Appointments Committee.

Apprenticeships

32. Rate for first year of Apprenticeship:

- £5.15 per hour (£9,936 p.a.), irrespective of age

From second year of Apprenticeship:

Non-Craft Apprentices:

- 17 year olds £5.15 per hour (£9,936 p.a.)
- 18-20 year olds £6.15 per hour (£11,865 p.a.)
- 21-24 year olds £7.70 per hour (£14,855 p.a.)

Craft Apprentices are paid the rate linked to the respective craft rate as set out in Joint Negotiating Committee for Local Authority Craft & Associated Employees, Red Book.

Schools will be advised that this is the Council's position and they will be asked to apply these rates to school apprentices.

Governance Arrangements and Development of Pay Structures

33. The current pay structure applicable to NJC employees was determined following a comprehensive job evaluation and equal pay exercise, following the provisions and processes of the national JE scheme. It was introduced in two stages, in 2005 and 2008. Separate pay structures are in place for employees covered by the following agreements:
- JNC for Local Authority Craft and Associated employees
 - JNC for Youth and Community Workers
 - The Soulbury Committee
34. The current pay and grading structure for posts at the level of Strategic Director and above was agreed by the (then) Contracts Panel on 4 March 2005 following recommendations from an external pay and benefits consultancy. The panel also agreed the pay structure for those posts which, at that time, were designated as

¹ Openness and accountability in local pay: Guidance under section 40 of the Localism Act (February 2012)

Head of Service. The mid-point for each of the grades was set at the market average for equivalently-sized jobs at that time.

35. The Contracts Committee subsequently replaced the Contracts Panel. It comprises a cross-party group of elected members who oversee pay and conditions issues for all posts which attract Chief Officer pay and conditions. The Chair of the Corporate Resources Overview & Scrutiny Committee has *ex officio* status on the Contracts Committee.
36. In considering pay structures and pay levels for Chief Officers, the Contracts Committee will seek external advice from an independent person or organisation with expertise in senior remuneration and benefits. It will take into account matters including:
 - An assessment of the size and market value of a job by reference to an established job evaluation system that allows objective comparison to data bases of similar jobs
 - The affordability of the recommended outcome from the job evaluation and market reference exercise in the short, medium and long term
 - The prevailing markets in which the Council operates, and the risk being unable to recruit or retain senior officers with the ability to manage the Council's affairs to its best advantage
 - The relationship with the remuneration of the wider Council workforce and national negotiating frameworks
 - The Council's senior structure and planned or foreseeable future changes to these
 - The expectations of the community and stakeholders
 - The total remuneration package
37. Since 1 October 2012, all Strategic Directors and Service Directors have been employed on JNC Chief Officer terms and conditions.
38. The top three levels of the Council's organisation structure and their associated pay bands are published on the Council's website in accordance with the requirements of the Local Government Transparency Code 2014. This information will be published annually, in addition to the requirement to publish the annual pay policy by 31 March.

Payment for Additional Duties and Work outside the Council

39. Contracts of employment of Chief Officers require them to be available for work on Council business outside 'normal' office hours and to work the hours and times necessary to fulfil their roles and responsibilities.
40. Chief Officers are not eligible for overtime and/or premium rates of pay for unsocial hours that apply to other groups of staff.
41. Contracts Committee will consider requests from the Chief Executive to undertake secondary employment or outside duties, whether remunerated or otherwise, to ensure there is no conflict of interest. In accordance with the Council's Code of Conduct for Employees, requests from Strategic Directors are determined by the Chief Executive. For all other employees, requests to take up remunerated

appointments are determined by the Strategic Director, Corporate Services & Governance; unpaid appointments are determined by the relevant Strategic Director.

42. Employees may be eligible to receive payments for additional duties and responsibilities beyond their normal role with the Council subject to the approval of the Strategic Director, Corporate Services & Governance. These payments may include honoraria and acting duty pay or the use of accelerated increments. Payments may also be authorised for electoral Returning Officers or specific responsibilities where the Council is the Lead Authority and for which services are re-charged by the Council. The Contracts Committee may approve the level and payment of such allowances to Chief Officers where they are not prescribed elsewhere.

Termination Payments

43. The Council operates a discretionary selective redundancy scheme which provides enhanced redundancy payments and a retirement policy that operates in accordance with the provisions of the Employment Rights Act 1996 and the Local Government Pension Scheme. The redundancy scheme implemented in January 2012 was reviewed in November 2012, and a further revised (reduced) Redundancy Payments Scheme was implemented with effect from 1 September 2013; in accordance with good HR practice, the scheme was reviewed in 2018/19 although no substantive changes were made to it.
44. Applications for voluntary redundancy from areas of the Council not 'at risk' of redundancy will only be approved where to do so would clearly support business planning and service delivery in the long-term, and wider strategic objectives as set out in the Council's Thrive Agenda. In order to reach a decision on whether or not to support an application, consideration will be given to the viability of a bumped redundancy where appropriate.
45. It is a recommendation of the former DCLG² that Full Council should be offered the opportunity to vote before termination payments of £100,000 or more are offered to staff leaving the organisation. In the unlikely event that a payment (comprising salary paid in lieu, redundancy compensation, holiday pay and any fees or allowances) over this amount to an employee is proposed, a report will be taken to Full Council for consideration.
46. Whilst there is nothing to prevent employees who have received voluntary redundancy and/or early retirement pension payments from working for another organisation or for themselves, the Council's general practice is to not re-employ them. The clear intention is that individuals should not benefit from further employment with the Council when they have already been compensated for loss of their job and may be in receipt of enhanced redundancy payments or pensions in accordance with this pay policy statement and other associated policies. A similar principle applies to re-employment of employees who have previously taken early retirement with enhancements.

² Openness and accountability in local pay: Guidance under section 40 of the Localism Act (Supplementary Guidance, February 2013)

47. There should therefore be a minimum of 12 months' break before consideration is given to their return to employment within the Council in the circumstances outlined above. There may, however, be occasions when labour, skills or knowledge are required, and particularly in the case of employees who were made redundant, individuals will not be barred from applying for roles such as casual workers (NOMOs) if there is no direct link with their former job and is outside of the service they were previously employed in.

Publication and Access to Information

48. The Council's annual pay policy and any in-year revisions will be published in full on the Council's website. The Local Government Transparency Code 2014 also requires publication of certain organisational issues, and these overlap the pay policy in a number of respects; these will also be accessible on the Council's website.

New Pay Spine from 1 April 2019

Grade		SCP	2019-20	Hourly rate
			Salary	
			£	£
Apprentice		App	£9,936	5.15
		1	17,364	9.00
	A	2	17,711	9.18
B		3	18,065	9.36
	C	4	18,426	9.55
D		5	18,795	9.74
D		6	19,171	9.94
		7	19,554	10.14
	E	8	19,945	10.34
	E	9	20,344	10.54
	E	10	20,751	10.76
	E	11	21,166	10.97
		12	21,589	11.19
		13	22,021	11.41
F		14	22,462	11.64
F		15	22,911	11.88
		16	23,369	12.11
F		17	23,836	12.35
		18	24,313	12.60
F	G	19	24,799	12.85
	G	20	25,295	13.11
		21	25,801	13.37
	G	22	26,317	13.64
	G	23	26,999	13.99
		24	27,905	14.46
H		25	28,785	14.92
H		26	29,636	15.36
H		27	30,507	15.81
H	I	28	31,371	16.26
	I	29	32,029	16.60
	I	30	32,878	17.04
J	I	31	33,799	17.52
J		32	34,788	18.03
J		33	35,934	18.63
J	K	34	36,876	19.11
	K	35	37,849	19.62
	K	36	38,813	20.12
L	K	37	39,782	20.62
L		38	40,760	21.13
L		39	41,675	21.60
L	M	40	42,683	22.12
	M	41	43,662	22.63
	M	42	44,632	23.13
N	M	43	45,591	23.63
N		44	46,589	24.15
N		45	47,591	24.67
N		46	48,589	25.19

Recruitment and Retention Allowance Policy

Statement of Purpose

1. The Aim

In order to deliver high quality services consistently, Gateshead Council has to attract and retain high quality people. Market forces in the job market may occasionally require the Council to consider exceptional payments in addition to the “rate for the job” which our internal pay structures would normally indicate. This policy outlines how the Council will assess whether a recruitment and retention allowance needs to be paid to attract and retain the right person for the job.

2. Definition of market supplement

A recruitment and retention allowance is a separately identifiable sum paid in addition to the salary for a post in recognition that current levels of pay within the wider employment market are greater than the salary determined by internal pay structures which has resulted in recruitment and or/retention difficulties.

3. Who is covered by this policy

The policy applies to all employees of the Council, (excluding employees directly employed by schools), who hold posts which have been identified by management and Human Resources as having recruitment and retention difficulties, for example due to skills shortages and/or in comparison with current levels of pay within the wider employment market.

4. Additional Information

4.1 Other Council policies and procedures, which are relevant to this policy:

- Equal Opportunities Policy

5. Objective justification for payment of a recruitment and retention allowance

Where a manager considers there is a case for payment of a recruitment and retention allowance in order to either recruit or retain employees, it will be necessary to submit a portfolio of supporting evidence to their Strategic Director. Where the Strategic Director considers that a recruitment and retention allowance is appropriate based on the evidence provided and that there is a clear business requirement, they will forward the portfolio to Human Resources for further consideration.

The portfolio of evidence will be referred to the Strategic Director, Corporate Services & Governance who will make a final decision as to whether an allowance can be authorised. In the case of Strategic Director and Service Director posts, any proposal to award a recruitment and retention allowance to retain an employee will be referred to Contracts Committee for a decision.

Any decision to award a recruitment and retention allowance must be clearly evidenced to ensure that the policy is applied fairly, consistently and is free from any bias. HR Advice will maintain a central record of any recruitment and retention allowances awarded and all supporting evidence.

A portfolio of evidence should include the following:

5.1 In cases for recruitment

- For all posts below Service Director level, details of previous efforts made to fill the post. This may include advertising in different publications, changing the wording of the advert, redesigning the job etc. At least two previous attempts must have been made to recruit to the post.
- Number and quality of applicants.
- Cost of recruitment where applicable.
- Details of any offers of employment made and reasons why they were rejected.
- HR Form requesting payment of a recruitment and retention allowance.

In the case of Strategic Director and Service Director posts, the decision to award a recruitment and retention allowance will be determined by reference to prevailing market rates, alongside the above evidence where available.

5.2 In cases for retention

- Consideration of other issues that may not relate to pay, for example redesigning the job, job rotation and career development. This may be appropriate in cases where an employee is considering leaving the Council, for a more “challenging or interesting” role, or a role which would provide better promotional opportunities. Payment of a recruitment and retention allowance in these circumstances would not necessarily encourage the employee to remain with the Council. As an alternative, the service may look at ways of making their job more interesting, such as giving them specific responsibility for a project, which would develop skills in different areas. The service may also look at opportunities for secondment or a transfer to another section or job role.

- Analysis of exit interview data.

5.3 In all cases

- A copy of the job profile and structure chart
- Copies of at least five job adverts from a variety of publications over the last six months including copies of job profiles/job descriptions and person specifications.

It should be noted that production of several higher paying job adverts which may not be representative of the whole market will not warrant the approval of a supplement.

6. Approval of a request to pay a recruitment and retention allowance

A complete portfolio of supporting evidence should be submitted to the relevant Strategic Director who will assess the evidence to ensure there is objective justification to pay a recruitment and retention allowance. Should the Strategic Director not support the payment of a recruitment and retention allowance, that decision is final. Where there is justification to pay, the Strategic Director will indicate the monetary value of the recruitment and retention allowance requested and forward the portfolio and their comments to Human Resources.

Human Resources will review and assess the information provided using comparative benchmark data.

Human Resources will refer the request to the Strategic Director, Corporate Services & Governance for a final decision.

6.1 Criteria for payment of a recruitment and retention allowance

Human Resources will review the request and:

- a) undertake further research using comparative salary benchmark data to establish whether the external employment market is paying substantially more for comparable jobs (i.e. the salary for that particular job is at least 10% less than the market median); and
- b) consider whether this causes significant recruitment and retention difficulties which are detrimental to operational activities; and ensure that payment of a recruitment and retention allowance is objectively justifiable and proportionate, and will not contravene equal pay legislation and the Council's Equal Opportunities Policy; and,
- c) check that the relevant service Finance Business Partner has confirmed that there is sufficient funding available to pay the recruitment and retention allowance.

6.2 Salary benchmarking

It is essential that research is undertaken to validate the request for payment of a recruitment and retention allowance by using salary benchmark data for similar posts.

Human Resources will refer to sources such as IDS and Local Government Employers, published pay and trend data in journals for example IRS reviews, labour force surveys, and earnings surveys.

6.3 Value of recruitment and retention allowance

If the request to pay a recruitment and retention allowance is approved, Human Resources would determine the actual monetary value of the allowance using salary benchmark information and also the portfolio of evidence submitted by the service.

The recruitment and retention allowance will normally be paid at the equivalent of either the mean market salary or 15% of basic pay, whichever is lower.

7. Review of recruitment and retention allowance

To ensure that the payment of an allowance continues to be justified and proportionate, it is necessary to review the position regularly against the criteria that was applied to the initial assessment. It is essential that the rationale and supporting evidence for payment of a recruitment and retention allowance remains current and a review is documented.

For this reason, the Strategic Director, Corporate Services & Governance will only approve payment of a recruitment and retention allowance for an initial period of up to two years subject to review, or up to five years in recruitment cases or in exceptional circumstances. Human Resources will assess the need to continue the payment using comparative benchmarking data. The decision to continue the payment rests with the Strategic Director, Corporate Services & Governance.

8. Conditions applicable to recruitment and retention allowance

- The payment will be expressly identified as a separate pay element and will be subject to the usual deductions for tax, national insurance and pension contributions.
- Employees working part time will receive any payment on a *pro rata* basis depending on their contracted hours.
- If a post holder in receipt of a recruitment and retention allowance moves to an alternative post within the Council, which does not attract a recruitment and retention allowance, the allowance shall cease from the date on which the post holder leaves the post which attracts the recruitment and retention allowance.
- A recruitment and retention allowance paid as a percentage of salary will be adjusted in line with annual pay increases.
- A recruitment and retention allowance will cease with immediate effect if (a) a recipient is subject to formal capability procedures i.e. formal capability action has been taken and the employee is subject to a capability improvement note or final capability improvement note and (b) where the employee is absent due to long term sickness (absent for 4 weeks or more), except where the employee's absence is directly related to a disability. The recruitment and retention allowance will be reinstated once the employee returns from long term sickness or is no longer subject to formal action under the capability procedure.