

South Kirkby and Moorthorpe Town Council



Capability Performance Policy

Capability Guidance

Standards of Capability

- a) The Capability Procedure should not be viewed primarily as a means of imposing sanctions and has been designed and should be implemented in such a way as to emphasise and encourage improvement in an employee's capability and not simply used as a punitive measure.
- b) Management is responsible for ensuring work standards are at an acceptable level in terms of quality, performance, commitment, etc., including professionalism, and should therefore ensure that every effort is made and appropriate support is given to achieving this.

Responsibilities of Managers and Employees

- a) All employees have a responsibility to achieve satisfactory standards of performance and should be given reasonable help and assistance to achieve the required standard. It is the responsibility of line managers and supervisors to ensure that staff are made aware of the standards through reference to job descriptions/employee specification and any other relevant documentation. Managers should take care to set standards that are realistic and measurable in respect of quality, time and cost.
- b) Managers should ensure all reasonable steps have been taken through the appraisal process to provide support by means of closer supervision, workload management, training, advice and counselling etc. before considering the capability procedure. If these steps do not result in the required improvement and the employee's level of competence is in question the manager/supervisor must decide whether or not it is appropriate to consider the matter under the Capability Procedure.
- c) When an employee's continued poor performance is being considered under the Capability Procedure it will be necessary to make a reference to earlier discussions which will have occurred in the appraisal system, supervision processes, etc. Any

records kept of discussions, irrespective of whether formal or informal, should be copied to the employee.

Day-to-Day Supervision

a) As part of the supervision process line managers should make every effort to support and encourage employees to achieve a satisfactory level of performance. By giving support and encouragement to staff and discussing performance problems when they arise the necessity for taking formal action may be avoided.

b) Line Managers should recognise that a sudden deterioration in standard of work could be the result of job related or personal factors, which could be of a temporary nature. Such problems may either be overcome by discussion and support, or understood and accepted as transient.

Managers Responsibilities

a) Managers play an important role in setting standards and monitoring performance. It is therefore important that managers have the skills to do this effectively and that they recognise this responsibility and undertake adequate preparation, seek support and carry out appropriate training where necessary to fully equip them for this role.

b) For employees, induction and job related training should be used to assist in establishing the standards required in reaching levels of performance and developing a positive attitude towards work.

Other Council Policies and Procedures

a) It is recognised that in some circumstances performance may be adversely affected by an employee's health. Therefore before taking any action under this procedure line managers should consider whether poor performance may be attributed to other factors which may be more appropriately dealt with under other council procedures or legislation; for example:

- Disability Discrimination Act
- The Council's Sickness Absence Monitoring Procedure.
- The Council's Alcohol and Drug Misuse Procedure.
- Line Managers and Service Managers should consult the town clerk or chair of the employment sub-committee for further guidance on this matter.

Authorised Officers

- a) The town clerk should ensure objectivity is applied where the apparent poor work performance is placing a strain on the relationship between the employee and his/her manager. In ensuring objectivity the line manager in any case will have no direct managerial responsibility for the employee concerned.
- b) The town clerk would usually chair hearings under the Capability Procedure at which an employee's dismissal by reasons of incapability is being considered and consequently will have the authority to dismiss, in conjunction with the chair of the chair of the employment sub-committee.
- c) The appointment of town clerk should not diminish the role of the line managers in establishing acceptable performance, monitoring and undertaking discussions/appraisals as part of the normal managerial support mechanisms.

Conduct of a Capability Hearing

- a) The town clerk will convene and chair the hearing. The administrative officer who has not previously been involved in the investigation should also be present to provide independent advice to the line manager.
- b) The Following procedure should be used:
 - The line manager will put the case to the town clerk hearing the case.
 - The employee or his/her representative will have the opportunity to ask questions or seek clarification.
 - The employee or his/her representative will put their defence.
 - The line manager will have the opportunity to ask questions.
 - The town clerk will have the opportunity to ask questions or seek clarification.
 - The line manager will summarise the case.
 - The employee or his/her representative will summarise the defence.
 - Both parties should then withdraw whilst the town clerk considers the decision.
 - Both parties will be recalled and the reasons and decisions given (either at the end of the hearing or at a later date) to be confirmed in writing by the town clerk.

Action Available to the Authorised Officer

- a) To impose no sanction and refer the case to the line manager (giving guidance on the matter).
- b) To undertake a further period of monitoring and review which may include an imposed training/support plan. If this results in a second hearing, the town clerk should hear the case, if possible.
- c) To terminate the employee's contract employment.

Capability Appeals Procedure

a) The Councils Appeals Process should be followed where an employee wishes to exercise their right of appeal against the decision of the Capability Hearing.

Procedure: Stages 1-3

3.2.1 Stage 1 – Initial Meeting

a) At least seven days written notification of the time and date of the meeting should be given, indicating that the meeting is to be held to discuss concerns about the employee's performance at work. A copy of the Capability Procedure should be enclosed with the written notification of the meeting. The employee has the right to be accompanied by a trade union representative or a fellow worker at all stages of the process and to request copies of appraisal reports and any supervision notes before the meeting. These rights should be included in the written notification. The employee should receive two copies of all correspondence so that they can provide any representative they have chosen with a copy should they wish to.

b) The line manager should make it clear that the meeting is not a disciplinary meeting and should specify those aspects of the employee's work which are unsatisfactory, referring to previous notes/documentation completed at previous support meetings such as routine performance reviews, supervision process, appraisal interviews, etc. The employee and/or his/her representative should be given the opportunity to respond.

c) If there is a suggestion that the employee's poor performance is linked to any physical or mental condition then the procedure should be suspended until the advice of an independent occupational health consultant has been sought.

d) The line manager will seek to jointly identify and agree with the employee an action plan to be achieved by a given date, including appropriate reviews. Arrangements should be made for support, resources and/or training to be achieved to the employee as appropriate. The timescale for the review period should not normally exceed three months.

e) A written record of all such review meetings should be retained and two copies given to the employee.

f) Every effort should be made to reach an agreement on the action plan. Should the employee fail to agree on the action plan, the line manager may, nevertheless, insist that the period of monitoring and review take place. If this is the case the reasons for the failure to reach an agreement should be formally recorded.

3.2.2 Stage 2 – Review Meeting

- a) At the end of the monitoring period, a further meeting will be arranged at which the employee's progress will be reviewed. Wherever possible, all persons who were present at the original meeting should participate in this, including where they may be a second review. The review should specifically address all the issues discussed at the original meeting and the new issues that might have arisen.
- b) If performance is considered to have improved to an acceptable standard during the monitoring period, the employee should be formally notified in writing and the process will be concluded.
- c) If it is felt that the employee's overall standard of performance is still at an unacceptable level, a second period of monitoring and review may be agreed. The employee should be warned at this stage that, if his/her performance is still inadequate after the second period, it may be necessary to consider termination of contract. This should again be confirmed in writing.
- d) After the second period of monitoring a second review meeting should be held. Wherever possible, all persons involved in the first review meeting should be involved in the second review meeting along with the town clerk. If performance is considered to have improved to a standard acceptable to managers during the monitoring period the employee should be formally notified in writing and the process will be concluded.
- e) If it is felt that there has still been no satisfactory improvement, and if no mitigating circumstances have been identified, the line manager will refer the matter to the town clerk who will arrange a Capability Hearing. The line manager will give written confirmation of this decision to the employee.
- f) Where mitigating circumstances are identified but the problem remains unresolved after the second period of monitoring the employee should be informed that the process will be repeated. They should be advised that, if the satisfactory performance persists, that matter will be referred to the employment sub committee who will arrange a Capability Hearing. Again, written confirmation of the decision will be given to the employee.

3.2.3 Stage 3 – Capability Hearing

- a) The employee shall be given written notification (of no more than one calendar month, or no less than one calendar week) to attend a capability hearing, heard by the employment sub-committee which will contain details of those areas of work which are below the standard required. Where large amounts of written evidence is involved, more time may be needed by the employee or their representative to prepare the case, and as such, there should be reasonable flexibility in this timescale. The nature of the employee's alleged incapability to discharge his/her duties to an acceptable standard must be clearly stated in the notice of the hearing. Such notice shall also inform the employee of his/her right to be accompanied at the hearing by a trade union representative or fellow worker.

b) If no satisfactory improvement in the employee's performance can be demonstrated and no mitigating circumstances identified, the employee's contract will be terminated. Where mitigating circumstances have been identified that have not already been considered previously, these should be looked at prior to making a decision.

c) In most cases, the employee will be told the outcome at the meeting, which will then be confirmed by letter (either handed personally to the employee or sent by recorded delivery). This letter should state the reasons for the action taken and explain the employee's right of appeal. The employee should be given two copies of the letter – one for his/her trade union if he/she so wishes. All payments in respect of statutory notice made to employees leaving the Council's employment through reasons of Capability Dismissal will normally be made as a single payment in lieu of notice.

Guidance

3.3.1 Standards of Capability

a) The Capability Procedure has been designed and should be implemented in such a way as to emphasise and encourage improvement in an employee's capability and not simply as a punitive measure.

b) Management is responsible for ensuring work standards are to an acceptable level in terms of quality, performance, commitment, etc., including professionalism, and should therefore ensure that every effort is made and appropriate support given to achieving this.

3.3.2 Responsibilities of Managers and Employees

a) All employees have a responsibility to achieve a satisfactory standard or performance and should be given reasonable help and assistance to achieve the required standard. It is the responsibility of line managers to ensure that staff are made aware of the standards through reference to job description/employee specification and any other relevant documentation. Managers should take care to set standards that are realistic and measurable in respect of quality, quantity, time and cost.

b) Managers should ensure all reasonable steps have been taken through the appraisal process to provide support by means of closer supervision, workload management, training, advice and counselling etc. before considering the capability procedure. If these steps do not result in the required improvement and the employee's level of competence is in question the line manager must decide whether or not it is appropriate to consider the matter under the Capability Procedure.

c) When an employee's continued poor performance is being considered under the Capability Procedure it will be necessary to make a reference to earlier discussions which will have occurred under the appraisal system, supervision processes, etc.

Any records kept of discussions, irrespective of whether formal, should be copied to the employee.

3.3.3 Day-To-Day Supervision

- a) As part of the supervision process line managers should make every effort to support and encourage employees to achieve a satisfactory level of performance. By giving support and encouragement to staff and discussing performance problems when they arise the necessity for taking formal action may be avoided.
- b) Line Managers should recognise that a sudden deterioration in standard of work could be the result of job related or personal factors, which could be of a temporary nature.

3.3.4 Managers Responsibilities

- a) Managers play an important role in setting standards and monitoring performance. It is therefore important that managers have the skills to do this effectively and that they recognise the responsibility and undertake adequate preparation, seek support and carry out appropriate training where necessary to fully equip them for this role.
- b) For employees, induction and job related training should be used to assist in establishing the standards required in reaching levels for performance and developing a positive attitude towards work.

3.3.5 Other Council Policies and Procedures

a) It is recognised that in some circumstances performance may be adversely affected by an employee's health. Therefore before taking any action under this procedure the line manager should consider whether poor performance may attribute to other factors which may be more appropriately dealt with under council procedures or legislation; for example:

- Disability Discrimination Act
- Sickness Absence Monitoring Procedure
- Alcohol and Drug Misuse Procedure
- Line Managers should consult the town clerk for further guidance on this matter where it may be necessary/useful to consider such mechanisms/arrangements as:
 - Independent Occupational Health Consultant
 - Coaching/Mentoring

3.3.6 Conduct of a Capability Hearing

The Town Clerk should be present to provide independent advice to the Committee.

- a) The following procedure should be used:

- The line manager will put the case to the chair of the employment sub-committee hearing the case.
- The employee or his/her representative will have the opportunity to ask questions.
- The chairman of the sub-committee will have the opportunity to ask questions or seek clarification.
- The employee or his/her representative will put their defence.
- The line manager will summarise the case
- The employee or his/her representative will summarise the defence.
- Both parties should then withdraw whilst the chair sub-committee considers the decision.
- Both parties will be recalled and the reasons and decisions given (either at the end of the hearing or at a later date) to be confirmed in writing by the employment-sub committee.