

TELSCOMBE TOWN COUNCIL



CAPABILITY POLICY

1 Statement

1.1 Telscombe Town Council are required to have in place the necessary systems to provide a competent framework of procedures to support and guide all employees to improve their capability or competence and deal reasonably and fairly in instances where employees cannot adhere to the required standards of performance.

2 Summary and Introduction

2.1 Most employees are conscientious, competent and provide good and on many occasions excellent performance. On occasions, however, employees may be found to not perform to the required standard warranting investigation as to whether performance is directly linked to a lack of capability or competence or indeed is attributable to something else. (Personal and non-work related issue(s)).

2.2 It is essential that any issue relative to capability or competency is investigated fairly and properly to enable the Council to maintain its effective community service.

2.3 Specific steps are set out in this policy to enable the Town Clerk and a member(s) of the Employment Sub-Committee to follow procedures when problems arise that appear to have their cause in the capability or competence of an employee to perform the duties for which they were appointed.

3 Definition

3.1 Capability relates to the necessary skill level and aptitude of an employee to carry out his or her contractual duties to an acceptable level required by the Council.

3.2 To determine whether an issue falls to be considered under the capability, sickness absence or disciplinary procedure, please refer to guidance notes attached – Appendix A.

4 Purpose

4.1 The objective is to provide the Town Clerk with the necessary tools and procedures in order to:

- Assist every employee with a capability problem, whilst at the same maintaining Telscombe Town Council's position that it cannot guarantee to maintain employment.
- To ensure employees performance is maintained effectively and capably and to deal with those employees not performing in a consistent and fair manner.
- To maintain openness and consideration of all approaches and suggestions from all parties when dealing with any capability issue.

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- To clarify and confirm management responsibility for resolving capability problems. From time to time and in the absence of a Human Resources Department, the Council may seek advice from an external third party and if necessary, guidance may also be sought from an Occupational Health Physician.
- To ensure that capability difficulties are dealt with efficiently within an agreed time frame, dependent upon circumstances, and that there is a clear outcome at each stage of the agreed procedure.

5 Procedure

5.1 Capability covers all matters related to performance with exception of those falling within the probationary or disciplinary/misconduct procedure and issues relative to employees' health which would be dealt with through the Sickness Absence Policy. Examples of incapability can be drug/alcohol abuse related and unsatisfactory performance. This procedure should be followed where an employee is unable to carry out tasks required to an acceptable level due to insufficient skills, aptitude or competency to perform the role effectively.

6 General Principles

6.1 This procedure applies to all employees except probationary employees.

6.2 The Town Clerk aided by the Employment Committee will take whatever necessary and appropriate action if an employee does not achieve an acceptable level of general performance, standards or attendance in carrying out the duties of their post.

6.3 Employee representatives will be made aware of the Council's policy on capability and stress the importance of ensuring consistent standards of performance. They will equally have a right of attendance at meetings held with employees within the informal/formal resolution stages of the procedure.

6.4 In cases of incapability, the process seeks to ascertain and identify the reasons for the problem and try and establish a reasonable and fair resolution.

6.5 When incapability is the direct result of a lack of required skills, the Town Clerk will be expected to agree an appropriate training and development plan to enable the employee to reach the required level of performance. The appraisal process may help identify any concerns regarding an employee's performance which can then be addressed with the appropriate action agreed between the Town Clerk and employee to assist with meeting the required development needs. It is not necessary or appropriate to wait until the next appraisal review if issues arise.

7 Informal Resolution

7.1 Where concerns arise relating to an employee's capability, the Town Clerk will initially arrange a meeting with the employee to determine reasons for the unsatisfactory performance.



7.2 As soon as any apparent difficulty is identified, the Town Clerk shall have an informal discussion with the employee concentrating on the following:

- Identify issue/problem causation
- Discuss standard of job performance required, both realistic and achievable
- Identify shortcomings in achieving the required standards
- Exploring possible reasons for shortcomings
- Agree how and when an acceptable level of performance might be achieved

An account must be recorded of the employee's own circumstances. The manager requires to explore fully the circumstances behind an apparent lack of capability (for example – seek to understand if and how any personal circumstances have contributed to the employee's lack of performance or behaviour) and then give the individual every opportunity to present their explanation of the situation.

Options available at this stage include:

- Training/retraining/development
- Referral, where appropriate to Occupational Health or Employee Support Service
- Mentoring/coaching
- Closer supervision for a limited period/shadowing
- Temporary alteration to existing duties which do not change the character of the job but allow the individual to develop at a more reasonable pace

7.3 During the process, a written record should be maintained by the Town Clerk to include an agreed action plan to address the problem/meet the required standards. A clear action plan and review dates must be agreed between the employee and the Town Clerk and a copy forwarded to the Chair of the Employment Sub-Committee.

7.4 Consideration will be given within the process to any implications arising from the Disability Discrimination Act (1995). Occupational Health may also be able to provide appropriate assistance.

7.5 The object of the informal stage is to lessen or remove the problem after adequate time has been allowed for improvement or assessment. Regardless of this, if it becomes clear that an acceptable level of performance has not been achieved during a reasonable time scale, the matter is to be referred to a higher level. The employee will be advised of this decision in writing and a formal procedure will be followed in accordance with Stage 1 below:

8 Formal Procedure

8.1 Failure to achieve improvements in performance will result in the instigation of the formal procedure. In such cases the employee will be given formal written notification of an interview to be held under the procedure within 10 working days of completion of the informal stage. This notification will include details of the general nature of the matter and examples



of the unsatisfactory performance, a copy of the Capability Procedure and the employee's right to be accompanied by a union representative or a work colleague of their choice, together with any documentation from the informal stage.

9 Stage One

9.1 A formal interview will be conducted by the chair of the Employment Sub-Committee, accompanied by the Town Clerk, the employee, and their companion. This part of the procedure will cover:

- Confirmation/exploration of the alleged unsatisfactory performance
- A review of set targets and timescales for improvement
- Impact of the shortcomings outlined
- Options on possible remedies including appropriate training/retraining and support.

The Town Clerk will outline the above details to the chair of the Employment Sub-Committee and then the employee or representative will explain their position and comment generally on the information provided.

9.2 After the interview, all parties will leave and the chair of the Employment Sub-Committee will consult with the vice-chair of the Employment Sub-Committee and review the situation fully and decide what action to take or recommend.

9.3.1 The chair of the Employment Sub-Committee will reconvene the meeting and advise all concerned of the recommended appropriate action. Review dates will be agreed between the chair of the Employment Sub-Committee, Town Clerk and employee at the conclusion of the interview. The outcome(s) of the interview should be formally recorded and all concerned should clearly understand the recommended agreed actions. The employee will be issued with a written First Stage Advice in the form of a letter with a recommended action plan attached. This will remain on the employee's personnel file for a period of not less than 12 months and should be linked with update reports from the Town Clerk commenting on developmental progress.

9.3.2 The application of the actions should be reviewed until the chair of the Employment Sub-Committee is satisfied that either of the following apply:

- the standard of performance is acceptable and likely to be maintained or
- it is likely that despite the action taken, the required performance will not be achieved in the contractual post or an alternative post

At the final review, if it is agreed that an objective may be reached by a short-term extension, ie, to complete training, then a revised review date can be agreed. The monitoring period will depend upon the particular circumstances of the case.

9.4 In the case of more serious performance problems, or where following the issue of previous advice there has been insufficient improvement or any improvement has not been maintained, then it will be necessary to proceed to Stage Two.



10 Stage Two

Advice: Where, without good reason, there has been little or no improvement

10.1 Where after the agreed or extended period of time improvement to the standard required has not taken place, the chair of the Employment Sub-Committee and Town Clerk will hold a further formal interview (arranged and held as in Stage 1) with the employee.

10.2 The employee should be advised at the interview that having regard to all the circumstances and evidence available, Telscombe Town Council has been left with no choice but to recommend termination of their contract on the grounds of capability. The employee will then be invited to respond.

10.3 Immediately following the interview, the chair of the Employment Sub-Committee and Town Clerk should recommend either of the following options and the Employment Sub-Committee should discuss the case and consider the options available as follows:-

- suitable alternative Council employment, if a position is available, within the individual's capabilities to include a trial period if required combined with a maximum of 12 months protection **or**
- dismissal with notice or with pay in lieu of notice.

The decision should be communicated in writing to the employee within 3 working days and relevant correspondence retained on the employee's personnel file for 12 months.

11 Notice to Terminate the Contract of Employment

The Employment Sub-Committee chair will notify the employee in writing, giving notice to terminate the contract of employment, the reason for the dismissal, the date on which employment will end and the right of appeal. The notice period will be in accordance with the statutory minimum, as specified in the individual's Contract of Employment. Given that the working relationship may have become strained at this point, payment in lieu of notice may be arranged.

12 Right to be Accompanied – Role of the Companion

12.1 The constructive purpose of the informal part of the procedure is to try to avoid recourse to the formal stages unless it is absolutely necessary to do so.

12.2 Employees have a right to be accompanied by a companion. This companion will be a trade union official and/or a work colleague. If the employee chooses for both to attend, the role of the work colleague will be to act as a silent observer.

12.3 If the employee chooses a work colleague or trade union official who for example had a conflict of interest or whose presence may prejudice the meeting, the employee will be asked to choose an alternative companion.

12.4 If the employee's chosen companion is not able to attend the meeting, an alternative date should be proposed to the employee. This must be within 5 working days of the date arranged for the original meeting.

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13 Probationary Period

13.1 New employees to Telscombe Town Council are subject to a six-month probationary period. For employees who display a lack of capability during their probationary period, the probationary performance review process should be used instead.

14 Ill Health

14.1 Ill health can affect employment in a variety of ways for example:

- prolonged sickness absence.
- frequent short term and apparently unrelated sickness absence for which there may be an underlying cause
- conditions which might affect capability but which have little or no effect on attendance.

14.2 Where ill health is having an impact on a person's ability to carry out their duties and confirmed by Occupational Health, the Town Clerk must adhere to the principles set out in this document, referring at all times to the Council's Sickness Absence Policy.

14.3 Where ill health results in that person becoming disabled, as defined by Disability Discrimination Act 1995, the Town Clerk has a responsibility to make reasonable adjustments to the working environment, working practices and potentially to the terms and conditions of service within the contract of employment. In all such cases the Town Clerk must contact the Employment Sub-Committee for advice in the first instance and/or seek third party Human Resources consultation before taking any action.

14.4 In all cases, medical advice will be sought from Occupational Health, the employee's GP and associated specialists. In these cases, it is important that management maintain regular contact with the employee (in consultation with the Employment Sub-Committee).

15 Personnel Records

15.1 All notes and copies of correspondence in relation to an employee's performance shall be retained on their personnel file for a period of 24 months. If after this period the situation remains unchanged, the notes and correspondence can be destroyed.

15.2 If the employee's performance has not sufficiently improved, all records shall remain on file for a further specified period as detailed above.

16 Procedure Review

The operation of this procedure will be periodically reviewed, normally every 3 years.

17 Records

17.1 Written records during each part of this process will be retained and kept confidential in accordance with the Data Protection Act 1998.



CAPABILITY PROCEDURE

Is it **DISCIPLINE** or is it **CAPABILITY**?

1. To distinguish between tackling an issue on the grounds of **Capability, Sickness Absence** or **Discipline** the 'acid test' simply is to determine whether performance concerns are prompted by:

- Skills, or aptitudes (ie can't do) = Capability Procedure

OR

- Willful conduct or misconduct (ie won't do) = Disciplinary Procedure

OR

- Ill health, long periods of absence, or patterns of absence (ie unable to do due to reduced duration in the workplace) = Sickness Absence Procedure

2. As with the Disciplinary Procedure, the Employment Sub-Committee Chair must be notified in the first instance before any **formal** application of the Capability Procedure ie **before** entering Stage 1.

3. It is imperative that the Employment Sub-Committee Chair is involved throughout the informal stages as well as the formal stages of the Procedure. The Town Clerk is most likely to be the first person to express concern over an employee's performance but before discussion with the employee, they should take advice from a member of the Employment Sub-Committee (who will, where appropriate, discuss the concern and the process with Employment Sub-Committee Chair).

Policy	Capability
Review Cycle	Every 3 years, or earlier in the event of legislative changes
Date Last Adopted	19 th May 2021
Previous Adoption Dates	n/a
Responsibility	Policy & Resources Committee and then adoption by Full Council