

FERRYHILL TOWN COUNCIL



POLICY

CAPABILITY

1.0 Introduction

- 1.1 The Council is committed to the highest levels of competence and conduct and is striving to provide a working environment where every employee is encouraged to achieve his or her full potential. It is recognised that discipline is necessary for the efficient operation of the Council and for the health and safety at work of all employees; and that disciplinary and capability procedures are necessary to assist in maintaining standards of performance and conduct and for promoting fairness and order in the treatment of individuals considered to be falling below acceptable standards.
- 1.2 The following procedures have been drawn up to provide a framework within which all capability and conduct matters can be dealt with fairly and without delay. They have also been designed so that management and individual employees are aware of their rights and obligations.
- 1.3 It is emphasised that these procedures are designed to encourage an improvement in an individual's performance or conduct where this is necessary, and are not merely a method of applying disciplinary sanctions. In this respect it is accepted by all parties that line managers play an important role in the day-to-day support and supervision of their staff and they should seek initially to rectify problems through informal discussions without invoking the formal procedures.
- 1.4 Where matters cannot be resolved through the normal supervisory relationship or where alleged actions or omissions are considered to be of a more serious nature, the appropriate formal procedures should be followed.

2.0 Aims and Scope of the policy

- 2.1 These procedures apply to all employees of the Council except:
- Employees engaged on a casual basis.
- 2.2 The procedures **do not** apply in the following situations:
- Where employment is terminated on conclusion of a fixed term contract where the term of that contract expires without being renewed.
 - Termination of a temporary appointment where the reason for termination is that the need for employee's services has expired, or is about to expire.
 - Termination of employment by reason of redundancy.
 - Resignation by the employee, or other termination by mutual consent.

3.0 Time Limits

3.1 The time limits referred to in the following procedures may be varied by agreement by both parties in writing. However, documents must be returned to the Town Clerk or other Nominated Manager within 5 working days of the Notification of Action.

4.0 **Nominated Manager**

4.1 The term “Nominated Manager” refers to the Finance and Administration Manager and Works Managers or any manager nominated by the Town Clerk for the purpose of carrying out any function under this procedure. Where the Town Clerk is the subject of the capability review, the nominated manager shall be the Chair of the Personnel Sub-Committee or any outside person nominated by him.

5.0 **Availability**

5.1 This document will be included in the employee induction pack. Copies shall be held at the Town Hall and outside works staff rest room at Mainsforth Sports Complex.

5.2 The Town Clerk will ensure that all staff involved in handling any stage of the capability or disciplinary process is are aware of their obligations under these procedures.

5.3 In the event of the capability procedure being invoked against an employee, the Nominated Manager must ensure that the employee is provided with a copy of the relevant sections of this document.

CAPABILITY PROCEDURE

1 Capability encompasses skill, aptitude, health or any other physical or mental quality and is usually distinguishable from conduct or misconduct, which should be dealt with under the disciplinary procedure. For example, an employee may not have the innate ability or the standard of health required to reach the necessary standards for the job; in which case, the capability procedure is the appropriate vehicle for dealing with the situation. This can be distinguished from cases where the employee is able to reach those standards but, for some reason, chooses not to do so. In such cases the disciplinary procedure may be appropriate.

2 Problems of incapability need also to be distinguished from disability as defined by the Equality Act 2010. Assistance is available to help the individual and the employer to overcome problems associated with disability and advice should be sought from the appropriate Manager where necessary. It is particularly important that employees who become disabled during their employment are given assistance and that recourse to the capability procedure is not the first consideration.

- 3 It is recognised that the Manager or Supervisor may have occasion, as part of the day-to-day management function, to draw attention to employees' minor inadequacies in performance without invoking the formal capability procedure. Employees themselves may also recognise problems and request a discussion. Early identification of problems relating to an employee's capability can, in many cases, lead to a resolution of the problem before there is a need to resort to formal procedures. Such action may include advice or firm guidance and in such cases, no formal written confirmation need be issued. However, where minor incidents are repeated, or in the case of more serious incidents, the following procedure should be followed.

DEALING WITH POOR PERFORMANCE

4. **STAGE 1 – Informal Support and Agreed Improvement Plan (Manager)
(note on file and formal confirmation letter to employee)
Time Frame: up to six weeks**
- 4.1 As soon as the Manager becomes aware that normal day-to-day supervision has failed to address an employee's unsatisfactory performance, the Manager should arrange to discuss the matter with the employee concerned.
- This discussion should be used to:
- Identify those aspects of the employee's performance, which do not meet the required standards. This should be done with reference to the employee's agreed job description or work plan wherever possible.
 - Ascertain the extent to which the employee realises and accepts that there is a problem.
 - Give the employee the opportunity to give an explanation, including any mitigating circumstances (e.g. the context within which the employee works has changed significantly; health or personal problems).
- 4.2 If the employee's conduct is identified as having contributed to his/her unsatisfactory performance in the job, it may be more appropriate to consider action under the terms of the Disciplinary Procedure.
- 4.3 If the employee accepts that there is a problem and seeks to achieve an improvement, the employee and the manager should develop an action plan which will include:
- A statement by the manager indicating the specific areas of work which are unsatisfactory and the level of improvement required in these areas.
 - The support and training to be given to the employee to assist him/her in achieving the level of improvement required.
 - A realistic timescale over which the improvement is required.
 - Ensuring that all other staff involved are fully briefed on, and implement,

their part of the action plan.

- The process for monitoring the employee's progress over this timescale.
- The likely result if satisfactory performance is not achieved and sustained.
- That the above will be recorded on the employee's personal file in the department together with any written comments or observations which the employee may wish to make.
- Confirmation of the above in writing to the employee.

Managers should use the Performance Review Document (Appendix A) to record the above points.

- 4.4 If the poor performance is identified as arising from long-term health problems, or frequent absence, the Manager may have to refer the matter to the Council's Medical Advisor and deal with the situation under the separate provisions relating to incapability due to ill health.
- 4.5 If the health problem is short-term in duration, an action plan should be designed to support the employee so that s/he can contribute his/her best efforts until former health is restored.
- 4.6 A review meeting date should be agreed as well as specific action points and a date by which improvements are expected to be seen. It is essential that monitoring is undertaken throughout this process.
- 4.7 If at the review meeting all parties agree acceptable improvements have been made the matter will be regarded as closed. The manager may find it necessary to continue to monitor the employee's performance for a time to ensure that the required level of performance is sustained. In such cases the employee should be advised of this.
- 4.8 If the performance of the employee is so serious or if, at the informal stage the employee fails to engage with the process, the procedure would move directly to Stage 3 with a final written warning and a 4 week improvement plan.
- 4.9 If, at the review meeting, insufficient or no improvement has taken place progress will be made to Stage 2.
5. **STAGE 2 – Written warning and further improvement plan. Time Frame: up to six weeks (Manager)**

NB: The employee may have an accredited trade union representative or work colleague attend any meeting under Stages 2, 3 and 4.

- 5.1 If insufficient or no progress has been made during informal monitoring the employee should be informed in writing that a **written warning** will be placed on the employee's file which will remain in force for a period of 12 months.
- 5.2 It is essential that the Performance Review Document continues to be used to monitor against the actions and targets set. A time frame for improvement (up to six weeks) and action points should be agreed.
- 5.3 It is vital that the monitoring process is on-going throughout the agreed period through interim review meetings; is carried out effectively and that the manager gives the employee on-going guidance on his/her progress towards the required improvement. Throughout this process the emphasis should be on helping the employee to improve.
- 5.4 During the period of support and training, the employee will be placed under appropriate supervision and observation in order to assist the process of improvement. The support and training might include measures such as the observation of other employees.
- 5.5 Following the monitoring period, a review meeting should take place with the Manager and employee concerned. This meeting should take place immediately upon the conclusion of the timescale specified in the agreed action plan, and the employee must receive adequate notice of the meeting which will include details of any specific issues to be discussed.
- 5.6 At the review meeting the manager will review the employee's performance over the support period. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed. In some cases the manager may find it necessary to continue to monitor the employee's performance for a time to ensure that the required level of performance is sustained. In such cases the employee should be advised of this and of the period during which monitoring will continue.
- 5.7 If, at the review meeting, insufficient or no improvement has taken place progress will be made to Stage 3. Confirmation should be provided to the employee in writing.
- 5.8 The Performance Review Document should continue to be used where time frames and action points should be agreed.
6. **STAGE 3 – Final written warning and further improvement plan. Time Frame: No more than four weeks (Manager)**

NB: The employee may have an accredited trade union representative or work colleague attend any meeting under Stages 3 and 4.

- 6.1 If no improvement has taken place and the employee continues to perform poorly, the employee should be informed that a final written warning will be

placed on the employee's file and will remain in force for a period of **18 months**. In addition the employee will be informed that a formal hearing with the Town Clerk or other Nominated Manager will be convened.

6.2 The employee will be given a final improvement period of no more than four weeks. At this point the Manager should discuss with the employee the possible outcomes, including dismissal on grounds of capability, should the required improvement not take place.

6.3 If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed.

7. **STAGE 4 – FORMAL MEETING (Nominated Manager) (Consider options including Dismissal)**

7.1 If, after the agreed period, or if it becomes clear to both the Manager and the employee before that time, that the employee will fail to meet the required level of performance, the Town Clerk and/or Nominated Manager will convene a formal meeting to discuss the matter. The purpose of the meeting will be to:

- Confirm the specific areas of work which are unsatisfactory.
- Confirm the standards required and determine whether those standards have been set at an unattainable level.
- Remind the employee of the steps to assist him/her to improve work performance.
- Discuss the outcome of the monitoring period.
- Establish the shortcomings.
- Establish if this is due to poor performance, misconduct or ill health.
- Consider the options available.

7.2 The employee must be informed in writing of the date, time and venue of this meeting, together with the names of the Managers to be present, the matters to be considered and the possible consequence. The letter should ideally be handed to the employee personally or sent to the employee's home address by first class post. At least 5 days notice should be given prior to the meeting taking place. The right to be represented by a trade union or other representative should also be given.

7.3 All correspondence will be copied to the employee representative unless the employee indicates otherwise.

- 7.4 At the meeting the employee must be informed of the details of the shortfalls in work capability and the measures implemented to facilitate improvement. The employee should be given the opportunity to present relevant information.
- 7.5 If, at the meeting, the employee is able to advance acceptable reasons to counter the allegation of lack of capability, no further action will be taken under the capability procedure and the meeting will be terminated.
- 7.6 In situations where there may be an underlying medical reason for the incapability, the meeting will continue under paragraphs 10 and 11 of this procedure. Where the poor performance is due to misconduct any further handling of the matter will continue under the provisions of the Disciplinary Procedure. The Capability Hearing shall be terminated at this point, and a further Disciplinary Hearing convened.
- 7.7 The Town Clerk or Nominated Manager will inform the employee in writing of the decision, together with the reasons for the decisions and the right of appeal.

8.0 **OPTIONS**

- 8.1 Taking into account the support given to achieve an improvement in performance, and improvement actually achieved and any points of view put forward by the employee, the Nominated Manager will consider the following options.

Extend the period of the action plan

- 8.2 This will give the employee a further opportunity to achieve the required level of work performance. The Nominated Manager should at this point issue the employee with a final written warning (confirmed in writing) that, unless the required improvement is made within a specific period of time, further action could be taken which could result in dismissal.
- 8.3 After the prescribed interval, the employee should be interviewed again by the Nominated Manager in order to be informed of the view now taken of his/her competence. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed.
- 8.4 If performance is still not satisfactory, then one of the remaining courses of action identified below should be taken.

Redeployment

- 8.5 An opportunity for redeployment into alternative employment can be considered. However, it must be made clear to the employee that such redeployment can only be offered if a suitable vacancy arises and if the employee is suitable for that vacancy. Any redeployment opportunity will not

necessarily be to an equivalent post or earning level and current earnings **will not be protected**. During such a period appropriate retraining will be given.

- 8.6 Any redeployment will be with the agreement of the employee, although this will depend on reasonableness and the redeployment opportunities available at the time.
- 8.7 The employee should be formally warned that failure to perform to acceptable standards will lead to further action being taken which could result in dismissal.

Dismissal

- 8.8 Where all other options under this paragraph are either not suitable or have been tried and failed, appropriate notice will be given to terminate the employment on the grounds of incapability.

9. APPEALS PROCEDURE

- 9.1 The employee can appeal against a first written warning, final written warning and dismissal. There is no appeal against Informal Action.
- 9.2 The time scale for requesting an appeal will be **five working days** from the date of the written confirmation of the outcome of the investigation.
- 9.4 A pro-forma (see the Council's Appeal Procedure) should be included on which the employee can give notice of appeal, including identification of the grounds for the appeal.
- 9.5 An employee may choose to appeal because:
- They think a finding or penalty is unfair
 - New evidence comes to light
 - They think the procedure was not used correctly
- 9.6 Records and notes of the meetings will be made available to the Town Clerk or Member Appeal Panel prior to hearing the appeal. (Elected Members drawn from the Council's Personnel Sub-Committee and the Town Clerk if the allegation is not against him.)
- 9.7 Employees will be contacted with the appeal arrangements as soon as possible and will be informed of their right to be accompanied at the appeal meeting by a work colleague or accredited trade union representative.

- 9.8. The employee and his/her representative will present the details of the grievance to the Member Appeal Panel and the Nominated Manager will outline the reasons for the management decision.
- 9.9 The Member Appeal Panel Chairman will inform the employee about the appeal decision, and the reasons for it, in writing within five working days of the appeal hearing.
- 9.10 The decision of the Member Appeal Panel will be final.

10.0 Where Health appears to be Affecting Capability

- 10.1 Capability as a reason for dismissal can involve health considerations, including injury and physical incapability. Where it is felt, or claimed, that an employee's capability is being affected by an underlying health problem, the following steps should be undertaken:
- 10.2 From the onset of the health problem, the Manager should keep in regular contact with the employee to discuss the nature of the illness, the expected duration of absence and the prognosis for the future.
- 10.3 If there is no indication of a return to work in the reasonable foreseeable future, or if there are any doubts about the employee's current state of health or current prospects for improvement, the employee should be consulted and advised that the advice of the Council's Medical Advisor will be sought for a report on his/her condition and prospects.
- 10.4 If the Medical Advisor's report does not indicate a return to work within an acceptable period taking into account the interests and needs of the Council, consideration will have to be given as to whether the continued employment of the employee is reasonable in the circumstances, having regard to the effects of the absence on the performance of the job.
- 10.5 The Nominated Manager should convene a meeting with the employee who may be accompanied by a work colleague of his/her choice not acting in a legal capacity.

The purpose of the meeting will be to:

- Investigate the circumstances of the illness in consultation with the member of staff.
- Establish up-to-date information regarding the current medical position and the prognosis.
- Seek to explore the options available and provide a mutually acceptable solution.
- Issue a formal warning to the employee as to possible outcomes.

11.0 OPTIONS

Adjustments in the Workplace

- 11.1 If the effect of the illness or injury is such that the employee can return to work but is left with a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities, it will be necessary to consider what reasonable adjustments can be made in the workplace to accommodate the needs of the employee in order to undertake the full requirements of the role, whether within the employee's current job or in alternative employment.
- 11.2 If the employee is expected to return to work and ultimately make a full recovery, there may be occasions where a phased return to work, or a return to partial duties in the short term, can be accommodated.

Alternative Employment

- 11.3 An opportunity for redeployment into alternative employment can be considered. However, it must be made clear to the employee that such redeployment can only be offered if a vacancy arises and if the employee is suitable for that vacancy. Any redeployment will be subject to an appropriate trial period. A redeployment opportunity will not necessarily be to an equivalent post or earnings level and current earnings will not be protected. Any redeployment will be with the agreement of the employee.
- 11.4 Employees who are found mutually acceptable alternative employment as an alternative to dismissal under this procedure must be given appropriate induction, job training and support in order to allow them to settle and become fully productive in their new job as soon as possible

Dismissal on the Grounds of Ill Health

- 11.5 If the Medical Advisor's opinion is that the employee will not be permanently prevented from performing his/her duties, but the timescale for a return to work is not acceptable to the Council, taking into account the interests and needs of the Council, and other options have proved unsuitable or unsuccessful, then the employee will be dismissed on the grounds of incapability due to ill health. The appropriate notice will be given.

Appeals Procedure

- 11.6 The Nominated Manager will inform the employee in writing of the decision, together with reasons for the decision, and the right of appeal. The appeals procedure will be as detailed in point 9 above.

FERRYHILL TOWN COUNCIL



CAPABILITY PERFORMANCE REVIEW

Managers Section *(to be completed during performance review)*

Month 1 – Review Date Month 2 – Review Date
 Month 3 – Review Date Month 4 – Review Date
 Month 5 – Review Date Month 6 – Review Date

1. Objectives/actions to be achieved before the next review	
Action	Date to be achieved

2. Interim training needs

3. Overview of the review (use reverse of sheet if necessary)
Employee’s comments
Manager’s comments

Signed	Supervisor/Manager
Employee	Date

OFFICER GUIDANCE

Procedure to be followed at the Human Resource Sub Committee considering Capability

Confidentiality

1. All documents in this process will be treated in the strictest confidentiality and will be marked confidential where required.
2. The press and public are excluded from the meeting.

Statement by the Authority

3. The Presenting Officer will make a statement and refer to the report in the presence of the member of staff, and the representative. The Presenting Officer may call witnesses at this stage.
4. The member of staff (or their representative) will have the opportunity to ask questions of the Presenting Officer (and any witnesses called) on the evidence given, including that of any witnesses.
5. The Chair and the Human Resource Advisor will have the opportunity to ask questions of the Presenting Officer and any witnesses.

Statement by the Member of Staff

6. The member of staff (or their representative) will make a statement relating to issues in the presence of the Committee, if they wish, and may call any witnesses at this stage.
7. The Presenting Officer will have the opportunity to ask questions of the member of staff and any witnesses.
8. The Chair and the Human Resource Advisor will have the opportunity to ask questions of the member of staff and any witnesses.

Summing Up

9. The Presenting Officer and the member of staff (or their representative) will have the opportunity to offer a summary of their statements if they so wish. No new evidence may be offered at this stage.

Parties to Withdraw

10. The member of staff and their representative will then withdraw from the meeting.

Consideration

11. The Chair, Committee Members, Presenting Officer and the Human Resource Advisor, will deliberate in private, only re-calling the member of staff to clear any points of uncertainty on evidence already given. If recall is necessary, the parties will return to the meeting notwithstanding only one is concerned with the point given rise to doubt.

Decision

12. When the Chair and Committee has arrived at a decision, all parties will be recalled to the meeting and informed of that decision.
13. The Human Resource Committee will then make the relevant recommendation(s) to full Council for the final decision.
14. The Human Resource Advisor will then outline how and when the decision will be conveyed in writing to the member of staff, and give any further details in relation to appeal or process.