

### **1. Context**

- 1.1 The purpose of this policy is to ensure employees are appropriately supported if they have difficulty in meeting the standards of performance required in fulfilling the role for which they are employed.
- 1.2 A clear understanding of the tasks to be undertaken, adequate training, good supervision and regular appraisal are essential to an employee's good performance. Where an employee does not reach or falls below the required standard of work performance, the Clerk or the Personnel Committee must examine the circumstances to identify the causes of inadequate performance and to identify appropriate remedial action.

### **2. When To Use The Capability Policy**

- 2.1 In dealing with poor performance, it is essential to distinguish between misconduct and capability.
- 2.2 Misconduct normally involves a measure of personal culpability for which some form of action under the organisation's disciplinary procedure will be appropriate.
- 2.3 Lack of capability is caused by a lack of understanding, ability, skill or experience. It may become apparent only when an employee has been in post for a while or revealed when there are changes in the nature of the job or the work environment. There may be a number of different causes – a lack of training, lack of understanding, poor management, or inadequate resources. This policy aims to help managers clearly establish whether the cause is the employee's lack of appropriate ability and skills, whether it is a result of a lack of clarity about role, poor supervision or inadequate training or whether it is a combination of reasons.
- 2.4 The capability policy is designed to be used where capability rather than misconduct is thought to be the cause of poor work performance. In the case of misconduct the disciplinary policy should be used.
- 2.5 Where a work performance problem is identified that is persistent and warrants action beyond regular supervisory contact with an employee, the Clerk must decide what appropriate action to take, including use of the Capability Policy.
- 2.6 The Clerk must be satisfied that appropriate, well evidenced, training, support and guidance have been provided, especially if there have been significant changes in the employee's role.
- 2.7 The Capability Policy shall not be used during an employee's probationary period. Where there are concerns about an employee's performance during their probationary period these should be addressed through regular supervision and probationary reviews. Where there are concerns about a probationary employees' capability they shall either have their probationary period extended or they should not be confirmed in post.
- 2.8 Periods of review of targets etc. will vary according to the situation and shall take account of the needs of the organisation and the level of skills development required of the employee. Overall, the resolution of questions of capability shall not normally

take more than six months. The total number of review meetings will also depend upon individual circumstances. Generally, where there are greater numbers of targets to be met over longer periods there will be a greater number of review meetings.

- 2.9 When looking to improve an employee's capability, consideration should be given to a number of different options that include
- Training
  - Personal development
  - Mentoring
  - Counselling
- 2.10 Capability review meetings shall not substitute for regular supervision. The nature and agenda of supervision meetings shall be reviewed to ensure that supervisory sessions remain supportive and broad in scope and do not focus merely on work performance difficulties as dealt with in capability review meetings.
- 2.11 There may also be a developmental need for the Clerk to help them be more supportive or provide better line management for the employee
- 2.12 Any person aggrieved by any decision concerning an assessment of their abilities that has taken place at any stage during the process shall have the right to use the Grievance Procedure to achieve a resolution of those specific issues before the Capability Procedure is moved onto the next stage.
- 2.13 Where a person's performance has not improved significantly by the end of the Capability Process, alternative options such as [\(demotion or transfer to another post\)](#) with the consequent loss of salary and benefits may be considered to be an appropriate alternative to the termination of contract.
- 2.14 Nothing in capability policy or procedures shall be taken to compromise or remove an employee's statutory rights under employment legislation.
- 2.15 Where the capability issue concerns the Clerk, the matter will be dealt with by the Personnel Committee.

## PROCEDURE

### 1. First Step Informal Review

- 1.1 The Clerk has the responsibility for identifying when there may be a question about an employee's capability to carry out their role. The first action is always for poor performance to be discussed with an employee as part of a regular supervisory arrangement with them, allowing the employee the opportunity to state their case and work towards improving their performance. It is probable that a fair and frank discussion about performance may highlight difficulties and unknown reasons for poor performance and clarify understanding about the level of performance required and require no further formal action.

### 2. Second Step Formal Review

- 2.1 The Clerk should formally investigate concerns about work performance before deciding to implement the Capability Policy and should, as part of their investigation draw together information from:
- Notes of supervisory meetings
  - The most recent appraisal
  - The employee's training record
  - The employee's induction programme
  - The employee's overall work targets and job profile
  - The employee's attendance records
  - Any relevant information about the employee's health

This list should not be considered to be exhaustive.

- 2.2. Based on the outcome of their investigation the Clerk shall decide whether or not to use the Capability Policy.
- 2.3 Advice should be sought if the employee has a health problem thought to be affecting their performance.
- 2.4 When the Clerk decides to use the Capability Policy they shall convene a formal capability review meeting with the employee. The employee must be given notice of and papers relevant to this meeting at least ten working days in advance of it.
- 2.5 The employee may be supported by anyone of their choice (including a Trade Union representative) at this meeting. The Clerk should chair the initial meeting to ensure that both parties are aware of their roles and responsibilities, to ensure that all issues about management and performance are adequately identified and an agreed course of action is implemented. The meeting shall be minuted and copied to all present. These principles shall be applied to any subsequent capability review meetings.
- 2.6 The capability review meeting shall
- identify whether or not support and training to the employee has been at a level which an employee could normally expect,

- identify those areas where the employee's work performance (including work targets) is felt to fall short of the standard normally expected,
- review and if necessary re-set the employee's work targets,
- identify the support that the employee will need to help them to meet their work targets
- set a programme of review of progress with work targets, support arrangements etc.

2.7 The employee shall have at least ten working days to consider the issues discussed at the capability review meeting. They shall, before the end of the agreed period, inform the Clerk whether or not they agree with the outcome of the meeting. If agreement cannot be reached then the Clerk should consider alternative action that may include use of the disciplinary procedure.

### **3. Final Step                      Review Outcome**

3.1 At the final capability review meeting, the employee shall be told:

- that they are now performing to the standard required and that no further action will be taken (unless performance problems recur); OR
- it is the Clerk's view that they still do not meet the performance requirements for the job; OR
- that they do not meet the performance requirements for the job, but there might be suitable alternative employment to which the employee could be transferred on the appropriate terms and conditions for that post.

3.2 If the view is that the employee still fails to meet the agreed performance requirements for the job, the Clerk shall forward all relevant papers with their recommendation to the Personnel Committee which shall review the process to ensure that it has been fair and reasonable to all parties concerned. All papers should be passed with a recommendation to the Committee to reject or endorse the recommendation in which case the employee shall be dismissed from their post. The Personnel Committee's decision and the reasons for it shall be confirmed in writing and the employee shall be informed of their right to appeal against the decision. The period of notice shall be as specified in the employee's contract of employment.

3.4 As an alternative to dismissal, the employee may be asked to consider any re-deployment options available at the time where their skills and experience meet the person specification for the post.

3.5 An employee has the right to appeal against dismissal on grounds of incapability. The aim of the appeal is to review the decision in light of:

- a claim that the Capability Policy was not correctly followed
- the employees belief that the decision reached is unfair

3.6 Appeals must be in writing to the Chairman within fourteen days of the employee receiving written confirmation of their dismissal. The employee and the Clerk may make written submissions to the appeals panel. All documents/evidence shall be sent to the

## Epworth Town Council Capability Policy 2017

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Chairman no later than fourteen days before the hearing and shall be copied to the Appeals Committee and the other parties concerned.

- 3.7 An appeal against dismissal on grounds of capability will be heard by the Appeals Committee of the Council.
- 3.8 Capability issues involving the Clerk will be considered by the Personnel Committee and any appeal will be heard by the Appeal Committee.