



Axminster Town Council

Capability (Poor Performance) Policy and Procedure

**Reviewed by Employment Committee; ratified by FULL Council
on 13th November 2023.**

1. Introduction

1.1 The purpose of this policy is to support, enhance, and improve the performance of Council employees. This procedure sets out a framework for resolving issues relating to poor performance in accordance with the Employment Rights Act 1996, Equality Act 2010 and the ACAS Code of Practice. The procedure aims to ensure that consistent and fair treatment is given to all individuals.

2. Scope

2.1 Capability refers to an employee's performance in the work expected of them to the required standards and timescales. A lack of capability (also defined as underperformance) exists where an employee is not performing the job to the standards required.

2.2 The Capability Policy provides a framework to address underperformance where this appears to be due to an employee's capability to do their job.

2.3 It should be recognised that capability problems may be outside the employee's direct control and may be symptomatic of underlying work problems or other personal issues. Very few employees choose to perform their work badly, make mistakes or deliberately fail to complete tasks. Consequently, in the event that an employee is underperforming, a manager should examine the circumstances to identify underlying causes and give support to the employee to help them to improve to the required standard of performance. Particular care should be taken when disability or health issues are involved when professional advice should be sought.

2.4 Appropriate action should be taken promptly as soon as it is noticed that an employee is not performing certain aspects of their job to the standard required. Delaying or doing nothing may cause the performance problem to escalate and cause delay in providing the necessary support to the individual.

2.5 Capability and poor performance includes issues of:

- incompetence (although gross incompetence would be considered as a disciplinary issue).
- negligence.
- failure to undertake work as directed by the Council or a Line Manager.
- failure to take responsibility required in the role.
- inappropriate decision making.
- poor or inappropriate communication.
- inadequate leadership.
- poor teamwork.

2.6 For matters of sickness, disability, or ill health, the Absence Management Policy will be used.

3. General Principles

3.1 The procedure is not a substitute for good management practices. It should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their manager.

3.2 The employee must be given at least ten (10) working days' notice of the requirement to attend a formal review meeting or an appeal. In the event of a formal warning or a dismissal, the employee has the statutory right of appeal.

4. Related Procedures

4.1 When using this procedure, it may be necessary to refer to the contents of other agreed documents such as:

- The Equality, Diversity & Inclusion Policy.
- The Attendance Management Policy.
- The Performance Management Policy.
- The Disciplinary & Grievance Policy.
- Other conditions set out in the Staff Handbook.

5. Representation

5.1 Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative or a work colleague. Representatives can not take an active part in review meetings or speak on behalf of the employee, but can support and assist the employee as necessary.

6. The Informal Procedure

6.1 The Line Manager should deal with minor issues of poor performance in the first instance. A meeting with the employee to discuss poor performance should be arranged and any problems or areas for concern should be raised. This meeting must be documented and signed as a true record by all those attending within five (5) working days of the meeting.

6.2 Appropriate support and training should be offered to assist the individual towards meeting the required standards in the future. Realistic targets should be agreed with the individual and future expectations made clear by the employee's Line Manager. The points discussed in the meeting will be recorded and confirmed in writing to the employee along with the agreed 'Performance Improvement Plan' (PIP) to achieve acceptable levels of performance.

6.3 A review meeting should be arranged within two (2) weeks to assess whether the targets are being met and whether the performance has returned to the standard expected. These meetings should provide sufficient guidance, support, and clarification of standards to rectify the situation. However, the formal procedure will apply when:

- informal advice or guidance has proved ineffective
- the performance is so poor that informal discussions are unlikely to help.

6.4 The informal procedure will last for no longer than four (4) weeks before either ending, or moving to the next stage of the Capability Review process.

7. The Formal Review

7.1 If informal discussions have proved unsuccessful in raising performance levels to the standards required by the Council, then the formal procedure will be invoked. There are three stages to the formal procedure. The employee has the right of representation at each stage. During each stage, the employee's performance will be monitored closely. The method of doing this will be made clear to them at the conclusion of each review meeting.

Stage 1: The Capability Review

The Capability Review should build on the informal discussions. It should be sufficiently specific so that the employee knows exactly what it is about their performance that is unsatisfactory and how they can improve to the required standard. The Line Manager will carry out the review.

The review has four main purposes:

To allow the Line Manager to discuss with the employee:

- the standards of work required.
- what improvement is necessary.
- how the employee can be helped to achieve them.
- how improvement will be assessed and the timescale which must be reasonable.

To allow the employee to:

- obtain a clear understanding of what is expected of them.
- give an explanation or comment on their work.
- give their views on how the problem can best be tackled.

To allow the Line Manager and the employee to explore other options, such as:

- additional instruction, training, or personal development activity; or referral to occupational health, which may involve alternative action under the Council's Attendance Management Policy.

To make clear to the employee:

- the timescale for improvement
- how and by whom their work will be monitored during the review period
- the consequences if their work does not improve or if improvement is not maintained.

Ideally, standards of performance should be agreed between the Line Manager and employee. However, in the absence of such an agreement, the Line Manager must satisfy themselves that any targets set are reasonable and non-discriminatory.

If training has already been given, then its effectiveness should be reviewed, and any further training and support agreed.

If the Line Manager is satisfied at the conclusion of the review that there is a shortfall in performance, the employee will be issued with a formal warning and a performance improvement plan (PIP), including timescales for improvement. It will also be made clear that failure to comply with the PIP will lead to the next stage of the formal procedure being invoked.

The length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances it should not be more than 2 months. The Line Manager must confirm the outcome of the meeting in writing to the employee within 10 working days.

Stage 2 – The Capability Review

If the employee fails to achieve the improvement within the timescales set out in the PIP, then Stage 2 of the procedure is invoked. This involves a further review based on the same structure as Stage 1.

Stage 2 of the Capability Review will be conducted by the Line Manager. If it is concluded that there is still a performance issue to be addressed, a further formal warning should be issued along with revised PIP giving details of the standards of performance required and the timescales within which these must be achieved.

The employee should be reminded that if the improvement set out in the PIP is not achieved, then Stage 3 will be invoked. It needs to be made clear that Stage 3 may result in a decision to dismiss the employee on the grounds of incapability.

Again, the length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances should not be more than one month.

A letter to confirm the outcome of the meeting should be sent to the employee within five (5) working days, it should also explain the employee's right to appeal against any warning issued.

Stage 3 – The Final Capability Review

The Final Capability Review will be heard by two members of the Employment Committee at a Review Panel meeting convened for that purpose. The Line Manager who conducted Stages 1 and 2 should also be present to provide details of the previous review meetings and of the steps taken to encourage improvement in the employee's performance.

The employee will have the opportunity to respond and put forward any points they wish to be considered. Consideration should be given to any alternatives to dismissal, such as redeployment or options of downgrading. However, this may not always be possible and will depend on each individual situation and the circumstances of the organisation.

The members of the Employment Committee Review Panel must satisfy themselves that they have considered all the relevant information, and that the employee has been given sufficient opportunity to improve. If they consider that the employee's performance remains unsatisfactory, they must inform the employee that their employment is terminated on the grounds of incapability or advise the employee of any alternatives to dismissal. The employee's dismissal will be with notice or, if serving their notice period is not in the interests of the Council, they will receive pay in lieu of notice. The dismissal must be confirmed in writing within ten (10) working days, stating the reasons for it, and informing the employee of their statutory right of appeal.

8. Levels of Authority

The appropriate levels of authority for this process are:

(although alternative arrangements may have to be made on occasion due to circumstances)

Stages 1 and 2 – The Line Manager

Stage 3 - Members of the Employment Committee (Review Panel Hearing)

9. The Right of Appeal

9.1 In the event of a formal warning or dismissal, the employee has the right of appeal to the Chair of the Employment Committee.

9.2 The only grounds for the appeal are:

- Accusations of unfairness or bias in the process that culminated in the warning or dismissal
- Failure of the Council to observe the adopted procedure ie lack of due process
- Failure of the Council to take into account all available and relevant evidence in the case

9.2 The Appeal must be made in writing within working ten (10) days of the date of the formal warning or the letter confirming dismissal.

9.3 Two members of the Employment Committee (comprising an Appeal Sub-Committee) will hear the appeal at a meeting convened for that purpose, providing that they have had no previous involvement in the matter. They will be assisted by an independent adviser to be commissioned by the Council at their cost. The appeal will take place as soon as is practically possible.

9.4 The Appeal Panel will consider the details of the poor performance presented by the Chair of the Final Capability Review and will consider the comments of the employee. The decision of any appeal hearing is final.

10. Training

Appropriate training will be given to the Town Clerk and any members of the Employment Committee who might be involved in managing this procedure/policy to ensure that they fulfil their responsibilities in a fair, balanced and equitable manner.

Policy reviewed by Employment Committee and approved by FULL Town Council.

26th June 2023 (amended 13th November 2023)

Policy adopted by Full Town Council 13th November and published accordingly.

Review date : By 13th November 2025