

POLICY TITLE

Capability

REVISION DATE

September 2020

REPLACES POLICY

May 2018

POLICY AIM

From time to time, an employee may lack the capability to perform the duties that he or she is employed to do. This policy aims to help the Council resolve these problems.

EXECUTIVE SUMMARY

This policy gives guidance on:

- Purpose and scope
- Principles
- Procedure

in regard to Capability.

WHO IS AFFECTED BY THE POLICY?

This policy will cover all Council employees other than those in their probationary period or on a seasonal workers contract.

Any employee serving a probationary period as part of their Conditions of Service will continue to have their capability assessed according to the established probation procedure.

POLICY STATEMENT

Skegness Town Council recognises the value of its staff and aims to put policies in place to ensure that they are treated fairly and consistently.

Employees' performance is critical to the Council's success. This policy will, wherever possible, focus on helping employees to become effective workers. This will be of mutual benefit to the individual employees concerned, their colleagues and the Council as a whole. Dismissal will be the last resort and will only be appropriate if all other possible solutions have been exhausted.

INTRODUCTION

The Employment Rights Act 1996 defines capability as "capability assessed by reference to skill, aptitude, health or any other physical or mental quality".

It is very important to understand the difference between incapability and lack of performance which is caused by a wilful refusal to work satisfactorily. The latter is about conduct, not ability. Problems with conduct will be dealt with under the Council's disciplinary procedure.

ACAS has produced guidelines which advise employers to agree a procedure for dealing with unsatisfactory performance, where questions of capability are raised. The justification for this is that these questions are more fairly dealt with under a specific capability procedure. This is because a co-operative employee who lacks capability (as defined above) is not "to blame" and, having not committed an act of misconduct, should not be dealt with under a disciplinary procedure.

PURPOSE AND SCOPE

The purpose of the policy is threefold:

- to identify constructive action which may be taken to resolve capability problems
- through such constructive action, to enable employees with capability problems to achieve an acceptable and effective standard of work
- to provide a consistent and fair procedure leading to appropriate redeployment or, in the last instance, termination of employment where remedial action has not worked.

PRINCIPLES OF THE POLICY

The Council will consult employees at every stage of the procedure and employees will be urged to include their trade union representative, or other person of their choice, in the process.

At every stage of the procedure the Council will provide, where appropriate:

- support, advice and guidance to the employee
- training or re-training where, following identification of the employee's need, the line manager decides that it is appropriate
- a review of performance and feedback to the employee within a fixed time scale. The individual will be encouraged to take responsibility for, and ownership of, the process of returning to effective performance.

The Council realise that any review of an employee's capability is a sensitive issue and will be dealt with confidentially.

The Council will record any action taken under this policy in the employee's personal file. When the employee concerned improves his/her performance to a standard and effectiveness satisfactory to their line manager, such that his/her capability is no longer in question, we will inform the individual of this. After twelve months of sustained satisfactory performance we will remove any written reference to the action taken under this policy from his/her file. (Refer to the Information Policy about the retention of Information and associated rights under the General Data Protection Regulations)

THE PROCEDURE

The Town Clerk may delegate all or part of the functions for non-direct reports to the Deputy Town Clerk or other relevant Line Manager

The Evidence

Where the performance of an employee is causing concern, the Town Clerk (or in the case of the Town Clerk the Chairman of the HR Committee) must first establish whether the problem being experienced is one of conduct or capability. If the poor performance is due to conduct, then the Council's disciplinary procedure should be followed.

If the Town Clerk or the Chairman of the HR Committee is satisfied that the employee is experiencing problems of capability (which can be assessed by reference to skill, aptitude, health or another physical or mental quality) then they should collect evidence which supports this. Evidence will have regard to job descriptions, person specifications, supervision notes, evidence of complaints or pieces of work and the standard required for the job will be decided. The Town Clerk or the Chairman of the HR Committee must deal with the matter with confidentiality and sensitivity.

Exploratory Discussion

The Town Clerk or the Chairman of the HR Committee should next arrange a meeting with the employee concerned. The employee should be notified in writing at least five working days before the meeting is due to take place. The written notification should advise the employee that this is a capability interview, **not** a disciplinary interview, and that they have the right to be accompanied by a trade union representative or other person of their choice.

At the meeting the Town Clerk or the Chairman of the HR Committee should inform the employee that their performance is deemed to be poor and/or ineffective and that their capability to do the work for which they were employed is being called into question. The Town Clerk or the Chairman of Business and Resources should tell the employee that the aim is to work together with the employee to return their performance to a satisfactory and effective standard, and that the matter is a serious one.

[Advisory Note: Those involved should bear in mind that, although it is unlikely, employees cannot resist the capability procedure. If they did, this would indicate a refusal to be helped, and this would be misconduct.]

The Town Clerk or the Chairman of the HR Committee should then share the evidence with the employee. The Town Clerk or the Chairman of the HR Committee should invite the employee to state his/her own point of view and discuss any matter which he/she feels may have affected his/her performance at work. If it becomes clear that special circumstances exist and that management intervention might either remove or seriously reduce the question of capability, then the Town Clerk or the Chairman of the HR Committee should take appropriate action. A date for a Capability Review will then be agreed, set and recorded.

If the lack of capability is identified as a medical problem, the Council should consider referring the matter to an Occupational Health Consultant. If the loss of capability has been caused by a recent physical or sensory disablement, then the Town Clerk or the Chairman of the HR Committee should gain the employee's consent to consult the:

- Disablement Employment Advisor (DEA) based at the Job Centre, to get advice about aids and adaptations which might improve the employee's performance in the workplace. A date for a Capability Review will then be agreed, set and recorded.

If it is clearly established that the poor and/or ineffective performance is because of the employee's lack of capability, which can be assessed in terms of skill or aptitude, then a Competence Schedule should be drawn up.

If the Exploratory Discussion was postponed:

- whilst the Town Clerk or the Chairman of the HR Committee looked into any special circumstances, then the results of this investigation should be discussed. If it is decided that an issue of poor performance no longer exists then the capability procedure should end here and all written references to it be removed from the employee's personal file. If it is established that a question of capability remains (which is not due to disablement reasons) then a Competence Schedule should be set. A further review date should be agreed, set and recorded.
- for consultation with the Disability Employment Advisor, because of the physical or sensory disablement of the employee, then the findings of the consultations should be discussed. Wherever practicable, the Council supports the adaptation of a place of work to make it possible for a recently disabled employee to continue in their designated post. If job re-design or redeployment are appropriate and/or preferred options, the possibilities should be fully explored.

If it is established at this stage, or later, that the poor performance continues due to capability assessed by reference to skill or aptitude then a Competence Schedule should be set. A further review date should be agreed, set and recorded.

Competence Schedule

The Town Clerk or the Chairman of the HR Committee should state in writing what has been agreed during the discussion (please see below). This must be clear and certain so that the employee understands what is needed.

The employee should identify any help they feel they will need in order to meet this standard, such as training or re-training.

If the Town Clerk or the Chairman of the HR Committee feel that such help, including any training or re-training, is needed, the necessary arrangements will be made.

The Town Clerk or the Chairman of the HR Committee should confirm in writing:

- the nature of the concerns and how current performance fails to meet the required standard
- the improvement expected
- the support and measures already introduced in an attempt to improve performance
- any additional training and support that will be provided in order to help the employee meet the standard
- the time period within which the employee must achieve the improvement required, how this will be monitored, the criteria to be used, and the date at which a review will take place

- what might happen if the employee fails to meet the required standard.

Review Period

A fixed time limit will be set for performance to improve. This should be not less than one month and not more than three months – unless the training schedule will not be complete within this timeframe. At any time between the minimum and maximum time periods the Town Clerk or the Chairman of the HR Committee may decide that the employee's performance has reached the satisfactory standard, and that their capability is no longer in question. If this happens the Town Clerk or the Chairman of the HR Committee will inform the employee.

Review Meeting

If the employee's performance materially improves during the review period - but not to a satisfactory standard - the improvement should be recognised, and more encouragement given. The employee should be informed in writing (see below) of what further improvements are required, and that these improvements must be made before the next review period.

If performance has not improved during the review period, then the employee should be told this. The employee should be informed of the continuing concerns about their performance, taking into account any special circumstances. They should be reminded of the steps previously taken to encourage them to improve and told as sensitively but as honestly as possible of the possible consequences of no improvement. As part of the monitoring process, the Town Clerk or the Chairman of the HR Committee should confirm in writing:

- the nature of the concerns and how current performance fails to meet the required standard and the improvement expected
- the support and measures already introduced in an attempt to improve performance
- any additional training and support that will be provided in order to help the employee meet the standard
- the time period within which the employee must achieve the improvement required, how this will be monitored, the criteria to be used, and the date at which a review will take place. (The time period during this second review period should not normally be less than one month or more than three months)
- what might happen if the employee fails to meet the required standard.

Details of all capability proceedings should be recorded on the employee's personal file.

If the aim of the Review Meeting is to compare the employee's performance against a Competence Schedule, then a full and frank discussion, with constructive feedback, should take place. Further review dates should be set as required until the employee's performance is satisfactory, up to a maximum time limit of six months from the date of the setting of the Competence Schedule. If the satisfactory performance is achieved, such that their capability is no longer in question, the employee should be told of this. If the satisfactory performance continues for 12 months, then all written references to the action taken under this policy will be taken off the employee's file.

Dismissal

If, after six months from the date of the setting of the Competence Schedule, the capability of the employee (due to skill, aptitude or other physical quality) has not improved sufficiently, then consideration should be given to what further steps could be taken such as termination of employment on the grounds of capability or action short of dismissal such as redeployment or early retirement.

Appeals Procedure

Employees who become involved in capability proceedings, and who believe they are being treated unfairly or that the letter or spirit of the policy was not being followed, may follow the Council's grievance procedure.

Employees who are dismissed on the grounds of capability shall have the right to appeal in accordance with the Council's appeals procedure.

Employees who decide to appeal should write to the Mayor within 21 calendar days of the date of the letter notifying them of the disciplinary action.

If the employee wishes to appeal against the decision, they should write to the Mayor stating their grounds for appeal. This should be done within seven calendar days of receiving the notification. The Mayor will then convene a meeting of the Appeals Committee consisting of no fewer than 3 Members who have not previously been involved with the case.

The Committee hearing the appeal should read all the notes relating to the case and contact the employee to invite them to an appeal meeting. This meeting should be held within 14 days from receiving the letter of appeal or if not possible within a timescale agreed with the employee. The employee should be informed that they have a right to be accompanied by a trade union official or a person of their choice.

Within 7 calendar days of the appeal hearing, the Committee hearing the appeal should respond to the employee in writing and notify them of their decision. The decision will be final.

Any letters or documents relating to the case should be placed on the employee's personal file.

POLICY APPROVAL

Approved by Management Committee 30th September 2020

POLICY REVIEW

This policy should be reviewed 2 years from the date of approval