



Capability Procedure Policy 5

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1.0 INTRODUCTION

- 1.1 Cuckfield Parish Council aims to help all employees to achieve optimum levels of performance. Employees have a contractual obligation to perform to a satisfactory level and it is the responsibility of the Clerk to identify monitor and maintain standards.
- 1.2 Poor performance must be identified and tackled promptly. Ultimately, lack of capability is a fair reason for dismissal, so it is important that proper procedures are followed and that every effort is made to rectify the problem. Proper use of the probationary period should identify employees who are simply “in the wrong job”.
- 1.3 Where the requirements of the job have changed over time and the employee has not been able to keep pace, or where capability has deteriorated, more innovative approaches such as counselling may be appropriate.

Capability can fall into three categories:

- (a) Performance below the required standard.
- (b) Capability affected due to ill health.
- (c) Negligence or the refusal to comply with instructions on performance standards.

This policy is concerned with (a) performance falling below the required standard due to lack of skills or aptitude.

Problems associated with (b) above should be dealt with under the Council’s Management of Sickness Absence Policy.

Problems associated with (c) above should be dealt with under the Council’s Disciplinary Policy.

2.0 AIMS

- 2.1 This capability procedure aims to establish a mechanism to follow in terms of identifying and addressing capability issues, i.e.

- Identify constructive action which can be taken to resolve capability problems.

- Through this supportive action enable employees to reach an acceptable standard of work, where possible.
- To follow a consistent and fair procedure leading to redeployment or termination of employment where remedial action has been ineffective.

At every stage of the procedure full confidentiality must be maintained.

3.0 IDENTIFYING PERFORMANCE WHICH FALLS BELOW THE REQUIRED STANDARD

3.1 Setting Standards

It is vital that required levels of performance are clearly articulated. Standards set should be realistic and measurable in respect of quality, quantity, time and cost. Special attention should be paid to young people with little experience of working life or employees whose first language is not English.

This may be achieved through a combination of:

- Clear job descriptions and employee specifications.
- Clear explanation of standards required at induction.
- Careful monitoring of probationary period.
- Fair and objective assessment at appraisal interview together with the identification of relevant training needs.
- Regular discussions between the Clerk and employees to ensure that standards are being accurately communicated and maintained.

3.2 Where concerns arise that an employee is failing to reach required standards of performance the following process should be followed.

4.0 PROCEDURE FOR DEALING WITH CAPABILITY PROBLEMS

4.1 Informal Stage (Initial Investigation)

The focus of the Clerk and the employee's efforts in all cases must be to work together to improve standards.

4.2 Once problems have been identified initial discussions should be arranged between the Clerk and the employee.

These should include:

- Clear explanation of the area/s of weakness causing concern.
- Identification of any underlying causes.
- Clear statement of the standards being set.
- Timescales for the achievement of the standards.
- An explanation of the consequences of failure to achieve standards.
- Encouragement and assistance to improve.
- Date for review.

4.3 Particular attention should be given to the provision of constructive support including:

- Adequate training.
 - Additional supervision.
 - Coaching or appropriate intervention.
- 4.4 Where new tasks are being introduced and are causing difficulties, particular attention should be paid to further training and development needs.
- 4.4 The Clerk should keep records of any occasions when discussions have taken place and of all issues raised, and provide a copy for the employee.
- 4.5 During the period of time given to achieve the required level of performance it is important to agree regular reviews to keep the employee informed of their progress.
- 4.6 This informal process must be followed at least once before invoking the formal Capability Procedure. If felt necessary additional advice may be sought prior to taking the formal action outlined below.

5.0 WHAT IF PERFORMANCE CONTINUES TO BE BELOW STANDARD?

5.1 Formal Procedure

If performance does not reach the required standard over a reasonable period of time* formal action should be taken:

- 5.2 At all formal interviews under the procedure, the employee has the right to be accompanied by a single companion, who is either a:
1. work colleague,
 2. employee representative, or
 3. trade union official. (A trade union official who is not an employed official must have been certified by their union as being competent to accompany a worker).

Legal representation is not permitted. The Council will not bear costs. The specific needs and circumstances of employees or their representatives will be catered for as far as reasonably practicable.

Where a trade union representative is to be interviewed formally on a capability issue his/her full time trade union official must be informed prior to the interview.

(*It is not practical to give precise guidance on timescales over which employees must achieve the required standard as this will vary according to the complexity of the job, the level of training required etc. so each case will need to be assessed individually as to what is considered reasonable).

5.3. First Formal Interview

Discussions must be held with the employee and an employee representative (if required). (**Standard Letter 1**). The Clerk should explain to the employee what the required standards are and how their performance falls short of these standards.

This should include

- The nature of the continued concerns regarding performance, and how this has been measured or assessed.
 - Identification of the support training, advice and assistance already given.
- 5.3 The employee should have the opportunity to offer an explanation regarding the reason/s for failing to reach the required standard and to discuss any additional assistance which might lead to improved performance.
- 5.4 It is important that the employee recognises the shortfall in performance and is involved in seeking resolutions.
- 5.5 If the employee considers that they are not capable of reaching the required standards the possibility of redeployment opportunities (possibly involving demotion) should be thoroughly explored.
- 5.6 An action plan should be agreed and designed to help the employee achieve the required standards of performance (e.g. further training, increased supervision, re-arrangement of workload, etc.), and a review period will be set during which performance will be carefully monitored. Details of the action plan need to be included in a letter sent to the employee.
- 5.7 The employee must be formally notified that failure to reach required standards could ultimately result in dismissal.
- 5.8 This must be confirmed in writing. (**Standard Letter 2**). This will constitute a formal warning and the employee will have the right to appeal if they consider the warning to be unjust.

6.0 FAILURE TO ACHIEVE REQUIRED PERFORMANCE LEVELS IN THE TIMESCALE SPECIFIED IN THE FORMAL WARNING LETTER.

6.1 Second Formal Interview

At the end of the review period a further interview will be arranged.

6.2 Improvement

Where satisfactory improvement has been made by the end of the review period an interview should be arranged and the employee informed that their current performance has reached the required standard.

Support and encouragement should continue to be offered.

Performance should continue to be monitored but formal review will only be necessary if levels of performance have deteriorated. This should be confirmed to the employee in writing. (**Standard Letter 3**).

6.3 Failure to Improve
In the event that all efforts to adequately improve performance fail, and redeployment options are not available or acceptable to the employee, a review hearing should be convened, normally chaired by the Clerk. If sufficient improvement has not been achieved by the date of this hearing a second and final warning will be issued that performance must improve or their employment will be terminated. A further review period will be set. **(Standard Letter 4).**

6.4 Redeployment
Where alternative employment is offered, details of the post will be confirmed in writing. The permanent salary and conditions will be those of the alternative post. **(Standard Letter 5).**

Where appropriate a trial period of up to 6 weeks will be offered during which current salary and conditions will be monitored. If the post proves not to be suitable during the trial period further redeployment opportunities should be explored before dismissal takes place.

7.0 DISMISSAL

7.1 If the final review shows that adequate improvement has **not** been made a meeting should be arranged between the employee, Clerk, Trade Union or other representative. The failure to improve must be fully and sympathetically explained and the employee should be given formal notification of dismissal on the grounds of capability. **(Standard Letter 6).**

7.2 Areas where the employee failed to reach the required standard must be outlined together with details of the statutory notice period (or pay in lieu of notice).

8.0 APPEAL

8.1 Where the employee feels that the procedure has not been satisfactorily resolved they should appeal in writing without unreasonable delay, setting out their reasons for the appeal.

8.2 Appeals should be heard without unreasonable delay and at a time and place which should be notified to the worker in advance.

8.3 The appeal will be heard by a panel of Councillors made from either the Chairman of the Council or the Chairman of the Finance and General Purposes Committee along with two other Councillors to make up a panel of three members of the Council.

8.4 At any such appeal hearing the employee has the right to be accompanied by a single companion who is either a:

1. work colleague,
2. employee representative, or
3. trade union official. (A trade union official who is not an employed official must have been certified by their union as being competent to accompany a worker).

The outcome of the appeal should be communicated to the employee in writing without unreasonable delay. (**Standard Letter 7**).

STANDARD LETTER 1 (Formal Interview)

CAPABILITY

Personal and Confidential

Dear

I write to inform you that in accordance with the Capability Policy you are required to attend a formal interview in relation to your performance at work.

The interview will be held on [date], at [time] in [details of venue]

You have the right to be accompanied by a work colleague, employee representative, or trade union official if you wish.

Please confirm your availability and that of your representative, if required.

STANDARD LETTER 2 (Action Plan)

CAPABILITY

Personal and Confidential

Dear

I refer to your interview on withat which you were accompanied by when your performance at work was discussed.

During the interview concern was expressed about the problems you were experiencing in [insert details of tasks/areas of work in which capability problem/s is/are evident]

.....
.....
.....

After full consideration of the points raised, it was agreed that the following action would be taken in an attempt to resolve these difficulties.

- (i) [insert details of constructive
- (ii)action to be taken by the
- (iii)manager and/or the employee
- (iv)to address these problems]

It was agreed that your performance would be reviewed in weeks/months.

A monitoring interview will be held weekly/monthly [insert dates as appropriate].....

If you wish to discuss any problems in the interim please contact who will be happy to offer all possible assistance.

At the interview it was explained that your performance falls below acceptable standards and that failure to improve your performance to an acceptable level could lead to further formal action under the Capability Policy and if insufficient improvement occurs, to the termination of your contract on the grounds of capability.

Every effort will be made to assist you to reach the required standard.

STANDARD LETTER 3 (Confirmation of Improvement)

CAPABILITY

Personal and Confidential

Dear

I refer to your interview on with.....
at which you were accompanied by regarding
your performance, and my previous letters to you dated
..... stating the outcome of previous interviews.

I am pleased to inform you that your performance has improved to the required standard and I do not intend to take any further action under the Capability Policy at the present time.

However, your performance will continue to be monitored. Should any further problems in your work performance arise, further action under the procedure may be necessary.

May I congratulate you on the effort you have put in to improve the standard of your work. I hope that you will be able to sustain this improvement, and would encourage you to seek help immediately should you experience any problems in the future.

STANDARD LETTER 4 (Formal Warning)

CAPABILITY

Personal and Confidential

Dear

I refer to your interview on with
.....
at which you were accompanied by, and to my previous
letter/s dated, regarding your work performance

During the interview the following points were made:
(i) [insert details of areas of work/tasks in
(ii) which capability problems are still being
(iii) experienced, detailing how the shortfall
(iv) has been measured/assessed]

Full consideration was given to all points raised during your interview but I regret
to inform you that your performance still falls below acceptable standards. I
therefore give you a second and final formal warning that your performance is
unsatisfactory and that failure to improve your performance by
..... may lead to the termination of your
contract of employment.

It was agreed that your performance would be reviewed on
.....

At this time a decision will be taken on appropriate action in the light of your
performance.

You have the right of appeal, as set out, against this warning which must be
made in writing and must be received within 14 days of the date of this letter.

In order to assist you to reach the required standard the following action was
agreed.
(i)
(ii)
(iii)

If any problems arise during the review period which you wish to discuss, please
contact
.....

STANDARD LETTER 5 (Redeployment)

CAPABILITY

Personal and Confidential

Dear

I refer to your interview on with
..... at which you were accompanied by
.....

At this interview reference was made to the final warning you were given in my letter dated

In that letter you were informed that if your performance did not improve you were likely to be dismissed.

During the period since your final warning was given, your performance has been monitored and was reviewed at your interview on
.....

Full consideration was given to all points raised at the interview. However, I am satisfied that I have given you sufficient opportunity and assistance to improve your performance to the required standard. Unfortunately, you have been unable to reach this standard.

Consequently, I have decided to redeploy/demote you to the post of
..... on the following terms and conditions:
[insert details of terms and conditions of new post including commencement and termination date of any trial period]. [Where a trial period is included insert

“as agreed you will have a trial period of in this post. Should you fail to achieve the required standard by the end of the trial period, consideration will be given to other redeployment opportunities where available. Where no such options are available or where you decide not to accept any options offered then I regret I will have no alternative but to dismiss you on the grounds of capability”.]

Please confirm your acceptance of this offer of alternative employment in writing. You have the right of appeal, as set out, against your redeployment/relegation which must be made in writing and must be received within 14 days of the date of this letter.

STANDARD LETTER 6 (Dismissal)

CAPABILITY

Personal and Confidential

Dear

I refer to your interview on with
..... at which you were accompanied by
.....

At this interview reference was made to the final warning you were given in my letter dated

In that letter you were informed that if your performance did not improve you were likely to be dismissed.

During the period since your final warning was given, your performance has been monitored and was reviewed at your interview on
.....

Full consideration was given to all points raised at the interview. However, I am satisfied that I have given you sufficient opportunity and assistance to improve your performance to the required standard. Unfortunately, you have been unable to reach this standard.

Consequently, I have no alternative but to dismiss you on the grounds of capability. You are entitled to weeks' notice. During your period of notice you will not be required to report for work.

You have the right to appeal against your dismissal as set out above. Notice of your appeal must be made to the Clerk, in writing, within 14 days of the date of this letter.

Any appeal however will not delay the date of dismissal.

STANDARD LETTER 7 (Appeals – Outcome of Appeal Hearing)

CAPABILITY

Personal and Confidential

Dear

You appealed against the decision of the capability procedure that you be dismissed.

The appeal meeting was held on I am now writing to inform you of the decision taken by[insert name/title of Councillor] who conducted the appeal meeting, namely that the decision to dismiss you stands/be revoked

[If dismissal is revoked a further assessment period may be included to further monitor capability].

You have now exercised your right of appeal and this decision is final.

CAPABILITY POLICY

GUIDANCE

Since it is so important to take prompt action to identify and deal with inadequate performance these guidelines are intended to assist in identifying when action is required under the Capability Policy and how to proceed.

1.0 Definition of Capability

- 1.1 Capability in employment can be defined as 'the ability of an employee to carry out the duties and responsibilities of their post assessed by reference to skill, aptitude, or any other physical or mental quality'.
- 1.2 Capability in relation to the procedure focuses on lack of skills/aptitude in one or more key aspects of the job. These are the areas of weakness which need to be identified and measured.
- 1.3 Difficulties experienced may be attributable to new technology, changing legislation, reorganisation or changing work patterns or promotion into a new role, and the Clerk should be particularly vigilant when these changes are taking place.

2.0 What should NOT be dealt with under the Capability procedure.

- Problems identified during the probationary period.
 - Where poor performance is due to lack of application, carelessness or negligence this should be dealt with as misconduct and addressed under the Disciplinary Policy as appropriate.
 - Decline in performance through ill health
 - Lack of skills or aptitude which can readily be remedied by suitable training, coaching, mentoring or increased supervision should be addressed by the appropriate intervention.
- 2.1 In all cases and where necessary the Clerk can take appropriate advice.
 - 2.3 Before invoking any of these policies it is important to investigate thoroughly the circumstances surrounding poor performance. For example, employees with personal problems may benefit from counselling, staff who have problems prioritising their workload could be helped by a Time Management Course or closer supervision, newly promoted staff may require a mentoring programme.
 - 2.4 On occasions poor performance may relate to an excessive workload and reorganisation of the job may be required.

3.0 When to use the Capability Policy

3.1 Once it is clear that:

- Poor performance exists.
- Targets set are realistic.
- The lack of aptitude or skill is not improving sufficiently in spite of appropriate interventions.

The following action is recommended.

4.0 Informal Interview

- The tone of this first informal interview should be sympathetic and constructive rather than judgmental.
- the aim is to identify the gap between actual performance and the required standard of performance. Required standards must be clearly explained and the shortfall properly identified. The standards must be realistic and consistently applied.
- discussions should explore means of filling this gap, e.g. training, increased supervision, spending time with more experienced employees.
- the employee should be encouraged to explain any reasons for poor performance.
- whilst the tone should be encouraging the importance of achieving acceptable standards must be stressed in view of the ultimate consequences of failure to achieve standards.
- a date for review should be agreed together with a programme for the regular monitoring of performance in the interim.

4.1 Up to two informal discussions may be appropriate before proceeding to the formal stage of the procedure. Employees must have sufficient warning of unsatisfactory performance and be given adequate opportunity to improve. The Clerk and panel must keep notes of the discussions held and records of specific examples of poor performance.

4.2 If insufficient improvement occurs in the timescales agreed, the formal capability procedure should be followed.