



Capability Procedure

Introduction

Sherburn in Elmet Town Council recognises that employees should be treated fairly and that managers should not discriminate against employees in the way they manage performance. This procedure is a framework for dealing with cases of poor performance in a fair and supportive way. It aims to ensure that any employee's ability to achieve acceptable standards of work are addressed clearly. Equally, to ensure that supervision, training, counselling and support measures are used to assist the employee to reach the acceptable standard and provide a clear procedure for the termination of employment in cases where the employee is not reaching the acceptable standard of performance. It sets out a framework for resolving issues relating to poor performance, in accordance with the Employment Rights Act (1996), Human Rights Act (1998), and the ACAS Code of Practice on Disciplinary Procedures. Where there are issues of misconduct or of negligence, these will be dealt with under the Disciplinary Procedure. For matters of sickness, disability, or ill health, the Sickness Absence Policy will be followed.

General Principles

This procedure is not a substitute for good management practices. It should only be invoked when initial attempts to improve performance management have been unsuccessful following discussions between the employee and their line manager. The employee must be given at least 5 working days' notice of the requirement to attend a formal review meeting or an appeal. The employee has the right to be represented at formal review meeting or appeal. In the event of a formal warning or a dismissal, the employee has the right of appeal.

When using this procedure, it may be necessary to refer to the contents of other adopted policies, such as:

Equal Opportunities Policy
Disciplinary and Grievance Policy
Sickness Absence Policy

These guidelines state that:

- (1) The employer aims to ensure that all employees understand what is expected of them in terms of performance;
- (2) That performance will be monitored via regular supervision meetings with the employee and her/his line manager and through the annual performance management process;
- (3) Employees are given appropriate training and support to meet those standards.



The following principles applies to all staff who will be employed at Sherburn in Elmet Town Council:

- (i) Problems of poor performance are dealt with quickly and equitably
- (ii) A full explanation will be given to the employee of where they are not meeting the required standard
- (iii) An employee has the right to be accompanied to any meeting held as part of this procedure by their trade union representative or fellow employee.
- (iv) Documentation involved in this procedure will be treated confidentially and only circulated to those directly involved.
- (v) When the formal stage of the capability procedure is activated, the Line manager will be involved at every stage to review how the procedure is being followed and offer advice and guidance and make sure that the procedure is being followed fairly.
- (vi) In cases of capability by ill-health the employee needs to inform the employer of their health issues and discuss where their workload and working conditions can be adjusted to accommodate their health issue.

Representation

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 take an active part in review meetings.

Informal Procedure

The Line manager (or Panel of the Personnel Committee) 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 by the Line manager. The line manager will invite the employee to the informal meeting to discuss the performance issue. The written confirmation must include the date, time and venue of the meeting, a copy of this capability procedure and a copy of the employee's job description.

The purpose of this meeting is to find a solution and a way forward should be agreed. The line manager should confirm expectations of the role and the standards required:

- (i) The Council should provide a full explanation of where the employee is not meeting the required standard
- (ii) The Council should define the expected standard of performance and give examples.
- (iii) The Council should try and establish if there are any outside factors that could have impacted on the employee's performance. Some of these could include: excessive workloads, limited resources, lack of training, ill-health, changes in management and the employee's personal circumstances.
- (iv) The Council should take account of the employee's perception of how they are performing and any evidence the employee can present to support their case.



- (v) A written record will be maintained by the line manager but will not put on the employee's HR file.

The Council should consider the circumstances around the employee's performance issues. Options available at this stage would include:

- (i) Appropriate Training / retraining/ development
- (ii) Referral (where appropriate) to Occupational Health
- (iii) Mentoring / coaching
- (iv) Closer supervision for a limited period
- (v) Temporary alterations to duties, which do not change the job, but allow the employee to develop at a slower pace

If the Council has accepted mitigating reasons around an employee's poor performance, then *no further action will be taken*.

If the Council still have concerns, realistic targets should be agreed with the individual and future expectations made clear by the Line manager. The agreed support plan will contain "SMART" targets, with an agreed review date. The Line manager will record the points discussed in the meeting and confirm this in writing to the employee along with the agreed support plan to achieve acceptable levels of performance. A review meeting should be arranged **within 4-6 weeks** (of the informal meeting) to assess whether the targets have been met and whether the performance is satisfactory.

SMART targets should always be specific, measurable, achievable, result-focussed and time-bound. If targets fall out of this scope, then they will be deemed to be inequitable. Before agreeing to a support plan, employees have the right to discuss and review the support plan with their trade union representative. A clear monitoring and feedback procedure should be established and the employee needs to be clear on what they have agreed to.

In most cases, these meetings should provide sufficient guidance, support and clarification of standards to rectify the situation. However, the formal procedure will apply when:

- (1) Previous informal advice or guidance has proved ineffective; or
- (2) The performance is so poor that informal discussions are unlikely to help.

Formal Procedure

If the informal discussions have proved unsuccessful in raising levels of performance to a satisfactory level set by the Line manager, then the formal procedure will be invoked. There are 3 stages to the formal procedure and the employee has the right of representation at each stage. During each stage, the employee's performance will be closely monitored. The method of doing this will be made clear to them at the conclusion of each review meeting.



A meeting between the line manager and the employee will be arranged and the employee must be given written confirmation of the meeting – including date, time and venue of the meeting. This should happen **within 10 working days** of the informal procedure ending.

The written confirmation must include examples of where the employee has not met the desired performance level or examples of where the employee has not completed targets on their support plan, a copy of this capability procedure, a copy of the employee's job description, names and job titles of all those invited to the formal interview and also state the employee has the right to be accompanied to the meeting by their trade union representative or work colleague. The letter should also state possible outcomes from the meeting.

If the employee is unable to attend the meeting, they must notify their line manager in writing as soon as possible and to state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence.

Stage 1: The Capability Review

The capability review should build on informal discussions and the outcomes of the support plan which has been in place for up to 8 weeks. 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 (or the Panel of the Personnel Committee) will carry out the review.

The review has four main purposes:

- (1) To allow the Line manager to discuss with the employee:
 - a. The standards of work required
 - b. What improvement is necessary
 - c. How the employee can be helped to achieve them
 - d. How improvement will be assessed and the timescales (which must be reasonable)
- (2) To allow the employee to:
 - a. Obtain a clear understanding of what is expected of them
 - b. Give an explanation or comment on their work; and
 - c. Give their views on how the problem(s) can best be tackled
- (3) To allow the Line manager and the employee to explore other options, such as:
 - a. Additional instruction, training, or personal development activity
 - b. Or referral to Occupational Health
- (4) To make clear to the employee:
 - a. The timescale for improvement
 - b. How and by whom their work will be monitored during the review period
 - c. 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 the employee. However, in the absence of such an agreement, the Line manager must satisfy him/herself that any targets set are reasonable and non-discriminatory. If



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

After the meeting, the Line manager will review all the evidence and decide what action to take or recommend. At this stage the following options are available:

- (1) No further action
- (2) After reviewing the evidence, a second support plan with SMART targets and deadlines is set, with a date for a second review interview set within 1-3 months following the first formal interview
- (3) Recommend changing work practices
- (4) Recommended training
- (5) Recommended deployment to another post – this could be to another post with a lower salary.
- (6) In cases where capability issues are on ill-health grounds, the line manager can recommend that the employee take sick leave until the employee is certified fit by Occupational Health.
- (7) In more serious performance issues, the line manager can recommend that the employee proceed to Stage 2 of this procedure.

If the Line manager is satisfied at the conclusion of the review meeting that there is a shortfall in performance, the employee will be issued with a formal warning and an action plan, including timescales to achieve. It will also be made clear that failure to achieve the action plan will lead onto the next stage of the formal procedure. 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 3 months. The Line manager should confirm the outcome of the meeting in writing to the employee within 5 working days. The letter will cover:

- (a) The capability issues
- (b) Any decision that has been made and the reasons for the decision
- (c) Any support/action plan with deadlines and SMART targets with date of review meeting
- (d) The employee's right to appeal
- (e) Issue a first stage written warning
- (f) Make clear that failure to improve performance will result in the employee moving to stage 2 of this procedure.

The outcome of the appeal will be recorded and all parties involved in the process need to be clear about the recommendations. The employee will also be issue with a First stage written warning and this will remain on their HR file for 12 months.

Stage 2: The Capability Review

If the employee fails to achieve the standards in the timescales set out in the action plan 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 (or Panel of the Personnel Committee). If it is concluded that there is still



a performance issue to be addressed, a further formal warning should be issued along with an action plan 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 action plan 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. 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 3 months. A letter to confirm the outcome of the meeting should be sent to the employee within 5 working days, it should also explain the employee's rights to appeal against any warning issued.

Stage 3: The Final Capability Review

The final Capability Review will be heard by three members of the Personnel Committee. The Line manager who conducted Stages 1 and 2 should also be present to provide details of 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.

The employee will be informed of the decision taken by the Line manager, who should confirm the outcome of the Stage 2 formal meeting in writing to the employee within 5 working days. The letter will cover:

- (a) The capability issues
- (b) Any decision that has been made and the reasons for the decision
- (c) Notice that a final written warning will be placed on the employee's Personnel file for 12 months.
- (d) Any action plan with deadlines for SMART targets with the date of the review meeting
- (e) The employee's right to appeal
- (f) Make clear that failure to improve standards will involve the employee progressing to stage 3 of the procedure.
- (g) The letter will contain confirmation of the final written warning.

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 Panel must satisfy themselves that they have heard all of 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 capability or 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 5 working days, stating the reasons for it, and informing the employee of their right of appeal.



Levels of Authority

Guidance is given here on the appropriate levels of authority, although alternative arrangements may have to be made on occasion.

Formal	Officer	Authority
Stage 1 and Stage 2	Line manager	Formal warnings
Stage 3	Panel of the Personnel Committee	Dismissal
Appeal Hearing	Appeals Committee	Dismissal

The Right of Appeal

In the event of a formal warning or dismissal, the employee has the right of appeal to the Line manager (or Panel of the Full Council in relation to matters concerning the Line manager). The appeal must be made in writing within 10 days of the date of the letter confirming dismissal.

Three members of the Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter. They will be assisted by an independent adviser. The appeal will take place as soon as is practically possible. The Appeal Panel will consider the details of the poor performance presented by the Chairman of the Final Capability Review panel and will consider the comments of the employee. The decision of any appeal hearing is final.

Training

Appropriate training will be given to the Line manager or any members who might be involved in the capability or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

Template Performance Improvement and Support Plan

Name:

Expectation	Areas of concern	Action taken and plans for support	Expected improvement	Timescales/ deadlines	Support person
<i>Specific target setting</i>	<i>Relating to skill, aptitude or ability</i>	<i>Actions taken already through performance or appraisal</i>	<i>Detail specifically what action and improvement is expected</i>	<i>When should the actions be completed by</i>	<i>who</i>



Flow diagram of Capability Review Process

The line manager should deal with minor issues in the first instance.

If concerns are raised by the line manager, the employee will be invited to an informal meeting by letter which indicates the start of the Informal Procedure.

