



**Portishead Town Council**

# **Capability Policy**

Policy Number	Version	Owner	Status	Review Date
PTC 003	21-07-2022	TC	Draft	

## **Introduction**

The Council aims to ensure that there will be a fair and systematic approach to the application of standards of performance required of its employees that supports the policy.

The procedure aims to:

- Ensure that a fair and consistent process is adopted regarding employee performance
- Help and encourage employees to achieve and maintain acceptable standards of performance
- Ensure that employees experiencing performance difficulties are managed appropriately, by adopting a constructive and problem solving approach to achieving improved work performance, through effective supervision, support and training
- Ensure that managers recognise the Council's separate arrangements for dealing with conduct, ill health and disability

## **Scope**

This procedure applies to the workforce employed by Portishead Town Council excluding employees on a probationary period. The procedure applies to all employees of the Council.

Where an officer holds a Politically Restricted Post, the provisions of the Local Government & Housing Act 1989 will supersede all or part of this procedure as required. Where allegations relate to the Town Clerk the provisions set out in the conditions of service for that post should be read in conjunction with this procedure.

Special arrangements also apply to action against trade union officials i.e. Branch Chair, Secretary or accredited union officers and stewards who are entitled to representation by a senior trade union representative or full time official. No capability process involving a trade union official should be started unless the Town Clerk has first been consulted and until a full time trade union official has been notified.

## **Roles and responsibilities**

Staffing and Finance Committee - hear appeals against dismissal.

Town Clerk - Dismiss, hear appeals and take any other actions under the policy deemed appropriate.

All other managers - Deal with performance issues within their own teams except dismissal of an employee. Note: It may be advisable to refer the case to a more senior manager in certain circumstances for example in complex cases.

Employee - Answer allegations or complaints made under this procedure and fully cooperate with all the associated meetings.

Representative or companion (either a trade union representative or work colleague) - Support and advise employee. Can put forward employee's case, ask questions or make representations but cannot answer questions that are directly put to the employee.

## **What do we mean by capability?**

Concerns regarding capability may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, aptitude, training or experience.

Such failings will be identified by use of the following procedure and steps taken to improve performance. Where such steps prove unsuccessful the employee could have their employment terminated on the grounds of capability.

Where there are issues of misconduct or negligence these should be dealt with under the Disciplinary Procedure. Where any shortfall in expected performance arises from long term or persistent illness this should be dealt with under the Sickness Absence Management and Ill Health Policy.

Managers must be alert to the possibility that the employee is suffering from a disability (both physical and mental) which affects their performance in which case reasonable adjustments need to be considered with the employee.

### **Principles**

- Employees are expected to be capable of carrying out the work they are engaged to do to the required standard
- Managers are expected to provide an employee with a reasonable opportunity to improve and provide support to achieve the required standard of performance. The period of time to improve and the level of support provided must be balanced against the needs of the Council
- Reasonable efforts should be made to informally address any issues of under-performance before instigating any formal procedure
- Managers should deal with matters promptly and diarise employee reviews in advance and employees must take all reasonable steps to attend capability meetings
- At any formal meetings employees have the right to be accompanied by a work colleague or a trade union representative
- At all stages of this procedure confidentiality must be maintained by all parties

While every effort will be made to help an employee improve their performance and retain them in post, the Council cannot guarantee to maintain employment if satisfactory performance is not achieved. In such cases close attention will be paid to the reasons for performance difficulties, appropriate record keeping and the support offered. The employee will not normally be eligible for any incremental progression during any formal stage of the process monitoring period. On entry into the formal process, incremental progression will be frozen for a 12 month period. This will be reviewed and access to incremental progression reinstated at the point when the employee has consistently met the required performance standard.

### **The capability procedure**

It will be made clear to the employee which HR procedure is to be followed, the reasons for that decision and that they will be kept informed throughout the process. If at any stage management has good reason to believe that an alternative procedure is more appropriate the process will be halted and the issue examined under a different procedure.

### **Informal action**

It is the line manager's responsibility, wherever possible, to work with employees to address any under-performance issues with employees and assist them in achieving the necessary levels of performance. To be effective this must be done at or around the time these issues

arise. One to one meetings and appraisal meetings are opportunities to raise any areas of concern. However, the line manager should discuss any areas of concern at the earliest opportunity rather than postponing discussions until scheduled 1:1 meetings or appraisal meetings.

A discussion will concentrate on:

- The standards of performance required and identifying any gaps
- Providing examples of underperformance, supporting information and required standards
- Exploring possible reasons for the deterioration in performance
- Providing any appropriate training, support and guidance necessary so that the employee has the opportunity to perform well
- Setting realistic standards of performance for the future, which will be monitored with agreed timescales for improvement
- Informing the employee that failure to achieve the required standards will lead to progression to the formal procedure

Notes of the discussions should be kept for reference purposes.

Full account will be taken of the employee's circumstances within the work place and, if appropriate, outside work. If the difficulty seems to be related to health, an occupational health adviser should be consulted. Other employee support options should also be considered e.g. referral to support services where appropriate.

Poor health can sometimes be a contributory factor to performance difficulties, but health issues should not be used as a reason to avoid addressing performance concerns in the first instance. Management will take account of occupational health advice when determining what procedure to be followed.

A review meeting, within no less than 1 month working time and no greater than 3 months working time (to allow for the staff members leave), should be arranged to assess whether targets have been met and whether performance is satisfactory. Staff may be accompanied by a colleague or union representative if they wish. In most cases these meetings should provide sufficient guidance, support and clarification of standards to rectify the situation. Where informal action does not achieve the required standard of performance or where the required performance is unable to be sustained, formal action will be implemented.

### **Formal action**

When it becomes apparent that an informal approach to improving performance has not achieved the required standard of performance, the Town Clerk should be consulted. Following agreement with the Town Clerk, the employee should be informed that formal action will start under the capability procedure. Although in most cases, stages will be sequential, some cases may require longer timescales due to either the complexity of the situation, where there is improvement but it is not sustained, or where there has been significant progress made but there is still further improvement required to meet the required performance standard.

At all formal stages employees will have the right to be represented by a work colleague or trade union representative. A timescale for performance to improve will be set and a review

date set to assess whether this improvement has been achieved. In certain cases, it may be appropriate to hold a midpoint review to provide additional support during this process.

### **Step 1:**

First formal improvement meeting Managers should prepare for an initial meeting with the employee by informing them of its purpose, their right to be accompanied by a union representative or colleague and providing at least 7 calendar days notice of the meeting to allow them to prepare. This should be confirmed in writing.

The purpose of the meeting is to identify clearly and fairly the ways in which an employee is considered to be underperforming. This should be evidenced from documents such as job descriptions, person specifications, appraisal documentation, meeting notes and evidence of complaints or pieces of work considered to be unsatisfactory. The employee will be given the opportunity to challenge and/or put forward any facts or evidence for consideration. This may include the need for some reflection on what is required of the employee and in some instances consideration of the manager's approach in their interactions with the employee.

In cases where the nominated manager considers that an employee may benefit from a further opportunity to reach the necessary standard of performance it may be appropriate to refer the employee back to the informal stage of the process. It should be emphasised to the employee that if after the repeat of the informal stage they have failed to make the required improvement in their performance then the formal process will commence. The nominated manager should also identify to the manager supporting the informal stage any suggestions of further support that could be considered to assist in the improvement process.

At the meeting, the manager will explore ways to improve performance which may include the following:

- Counselling, mediation or other support from within or outside of the organisation depending on the nature of the problem
- Extra support and supervision/coaching from the line manager
- Retraining or further training either on or off the job
- Temporary or permanent change of hours/duties, subject to the agreement of all parties and where feasible arranging for a colleague to act as a role model/mentor on areas of shortfall
- Agree a programme of support and monitoring with regular review periods so that the employee is clear about timescales, what standards are expected to be met within those timescales and when their performance will next be discussed
- Inform employee that failure to meet the required standards will result in the matter being referred to stage 2 of the capability procedure and that ultimately this could lead to the Council making a decision on their continued employment.

A letter or email will be sent confirming the key points of the meeting and any actions agreed, clearly outlining the improvement required and the timescales to be met. Whilst the emphasis will be on the problem and the agreed course of action put in place to rectify it, the employee should be reminded that if the agreed standard is not reached, ultimately this could lead to the termination of their employment on the grounds of capability. They will also be informed that records will be kept during the monitoring period.

Whilst it is difficult to be prescriptive about the actual time period which should elapse during this first review period because of the varying complexity and nature of different jobs, this first review period should not normally be less than a working period of 1 month or more than 3 months.

If performance has not improved sufficiently to achieve the standards, the employee will be informed of the required improvements before the next review period and the possible consequences of failing to reach the required standards.

At the end of agreed improvement timescale a meeting should be arranged to assess whether the employee has achieved the required improvement in performance.

If performance has reached a satisfactory level, the employee should be advised of this and that it is expected that this will be maintained. This will be confirmed in writing by the manager.

If the required improvement in performance has not been achieved the reasons for this and progress made should be explored with the employee. It may be appropriate to allow the employee a further period under stage 1 to achieve the required standard of improvement if it is felt that there is legitimate reason preventing this improvement from occurring. This should not normally be more than a period of 1 month. If there is no legitimate reason that the improvement has not been achieved the employee will be advised that the issues will be reviewed by a different manager under stage 2 of this procedure.

## **Step 2:**

Second formal improvement meeting

The employee must be given written notice of arrangements for the meeting, the reasons for the meeting, possible outcomes and the right to be accompanied at least 7 calendar days prior to the meeting. If the meeting is to be held by a different, more senior manager, the stage 1 manager will provide the manager who will deal with stage 2 with all relevant documentation from both the informal stage and stage 1. The employee will also be provided with a copy of this information in advance of the meeting.

At the meeting, the manager will explore with the employee what has happened so far under the formal procedure to date and the shortcomings in their performance. In cases where the nominated manager considers that an employee may benefit from a further opportunity to reach the necessary standard of performance it may be appropriate to refer the employee back to stage 1 of the process. It should be emphasised to the employee that if after the repeat of stage 1 they have failed to make the required improvement in their performance then the matter will be considered under stage 2 of this process. The nominated manager should also identify to the manager at stage 1 any suggestions of further support that could be considered to assist in the improvement process.

As part of the monitoring process, the manager should explore with the employee:

- The nature of the concerns, 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 may be provided in order to help the employee meet the standard, for example shadowing, weekly one to one meetings etc

- Any additional support that the employee feels would assist them in achieving the required standard
- The timescale in order to achieve the improvement required, how this will be monitored, the criteria to be used, and the date when a review will take place. The time period to elapse during this second review should not normally be less than 1 month or more than 3 months
- The possible consequences of continued failure to meet the required standard up to and including dismissal

This stage provides for a further cycle of support and monitoring as appropriate within an agreed time scale. A further meeting will be held at the end of the review period. If the desired improvement has not been achieved at the end of this review period and it is clear that the employee, despite the support measures introduced, is not able to improve to the required standard, a formal capability meeting will be convened. Equally, where an employee has been removed from the formal process, but within a short space of time their performance becomes a concern once more, the manager can re-enter the formal process at the same stage or next stage. If the period of time between leaving a particular stage and the point at which deterioration in performance occurs is a significant lapse in time it would be normal to re-enter the formal process at stage 1.

### **Step 3:**

The capability meeting

The employee will be notified in writing at least 14 calendar days prior to the meeting of the details and purpose of the meeting, their right to be accompanied by a work colleague or trade union representative and the potential outcomes of the meeting. Both parties will circulate papers (i.e. witness statements or other evidence to be considered) for submission at the meeting to arrive with the other party no less than 7 calendar days before the meeting. Both sides will also advise the names of witnesses they intend to call. The purpose of the meeting is to determine the evidence of the case so that the Town Clerk hearing the case can decide what action, if any, to take.

The persons attending the meeting will normally consist of:

- The Town Clerk who will chair the meeting
- The manager presenting the case (normally the manager who heard stage 2)
- The employee who is the subject of the capability issue
- A work colleague or trade union representative
- Any witnesses for either side who will be called if their evidence is required

Procedure at the meeting

- The Town Clerk will introduce those present to the employee and explain why they are there; the role of the accompanying person if present; that the purpose of the meeting is to consider whether action should be taken which could involve dismissal; how the meeting will be conducted
- Management will put the case and call witnesses as appropriate (witnesses will be called individually)
- The employee (or representative) will have the opportunity to ask questions of the presenting officer and any other witnesses called by management
- The employee (or representative) will put their case and call witnesses individually as appropriate

- All parties will have the opportunity to ask questions of any witness(es)
- The Town Clerk will have the opportunity to ask questions of both parties and any witnesses
- All parties will have the opportunity to sum up their case, no new matters should be introduced at this stage
- The employee and their representative, the manager presenting the case and witnesses will withdraw
- The Town Clerk will deliberate in private and may recall the employee, their representative and management to clear points of uncertainty on information already given. If recall is necessary, both parties are to return, even if only one is concerned with the point giving rise to doubt
- The Town Clerk will endeavour to announce the decision to the employee and their representative verbally at the end of the meeting. The employee will also be given notice of any right of appeal verbally at that time. If this is not possible, the Town Clerk will provide the employee with a realistic timescale of when a decision is likely to be made and agree arrangements for communicating this decision.

The Town Clerk will confirm the decision in writing to the employee as soon as possible and within seven calendar working days of the date of the meeting. In reaching a decision, the Town Clerk does not need proof beyond reasonable doubt of the employee's poor performance. Fairness requires that they have a reasonably held belief in the employee's poor performance based on genuine grounds and that reasonable steps have been taken to verify these conclusions. To form a reasonably held belief in the employee's poor performance, the Town Clerk must be confident that the evidence provided at the capability meeting shows:

- The standards of work required were known by the employee
- That the employee fell short of the standards
- That reasonable efforts were made to ensure that the employee had the necessary training and support to enable them to reach the required standard
- Despite these reasonable efforts this was not resolved and the necessary improvement did not take place

### **Findings following a capability meeting**

No case to answer

If the Town Clerk is satisfied that there is no evidence of lack of capability then they should inform the employee of this and confirm in writing as soon as possible and normally within 7 calendar days of the meeting

Further period of monitoring and support

In cases where the Town Clerk considers that an employee may benefit from a final opportunity to reach the necessary standard of performance it may be appropriate to refer the employee back to step 2 of the process. It should be emphasised to the employee that if after the repeat of step 2 they have failed to make the required improvement in their performance then a further capability meeting will be arranged. The Town Clerk should also identify to the manager any suggestions of further support that could be considered to assist in the improvement process.

## Dismissal with notice

It is reasonable for the Council to dismiss an employee where the reason relates to the capability of the employee for performing work of the kind which they were employed to do. If the employee's performance is confirmed as unacceptable and all alternative courses of action have been exhausted a decision could be taken to dismiss the employee on the grounds of capability. The employee will be given formal notice in accordance with their contract of employment or payment in lieu of notice. The letter of termination will confirm the effective date of termination, give the reason for dismissal and state the right of appeal.

## Appeal procedure

Employees are entitled to an appeal against dismissal. This should be submitted in writing within 10 working days of receiving the letter confirming the decision of the meeting to the manager identified in the letter. Any appeal letter must include reasons for the appeal and any evidence the employee wishes to submit. Appeals against dismissal are determined by three Councillors appointed by the Staffing & Finance Committee.

## Appeal decisions

The decision of the appeals meeting will be one of the following:

- Uphold the appeal and rescind the action taken
- Uphold the appeal in part which may result in the level of action being reduced
- Dismiss the appeal. There shall be no further right of internal appeal against the decision of the appeal meeting.

## Related Council policies

You may also find it helpful to read the following related HR & OD policies:

- Dignity at Work
- Disciplinary Policy
- Absence Policy
- Alcohol and Substance Misuse Policy

## The statutory and regulatory framework for capability decisions

The important provisions governing capability at work are to be found in:

- The Employment Act 2008
- The Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008