

Ferndown Town Council Capability Procedure

Author: L Harrison, Town Clerk, Ferndown Town Council 15 December 2020.

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1. Purpose and scope

- 1.1 The primary aim of this Capability Procedure is to provide a framework in which Ferndown Council (Council) can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
- 1.2 The Council recognises the differences between misconduct and incapability. Misconduct is the deliberate or careless failure on the part of the employee to perform to the standards of which they are considered capable. In such cases the Council will use the Disciplinary Procedure. In cases of apparent incapability, where the employee is lacking in knowledge, skill or ability and cannot perform to the standard required, the Council will use this Capability Procedure in an attempt to remedy matters and/or improve performance.
- 1.3 The Council also recognises that during employment an employee's capability to carry out their duties may deteriorate for a number of reasons. The most common ones are that the job changes over a period of time and the employee fails to keep pace with changes, or their circumstances change so they can no longer cope with the work.
- 1.4 The Capability Procedure will also be commenced if the Council is concerned about the employee's attendance or if they have had or are having long term absence from work due to illness or injury. This may include occasions when the employee is experiencing difficulties associated with a permanent disability.

2. Procedure

2.1 Informal resolution

- 2.1.1 Minor capability issues will be dealt with informally. The purpose of these informal discussions will be to identify areas of concern, establish the likely cases of poor performance, identify any training or supervision needs, set targets for improvement and agree a time scale review.

2.2 Formal procedure

- 2.2.1 In cases where informal discussion does not lead to a satisfactory improvement in performance or reliability, or where the performance issues are more serious, the following formal Capability Procedure will be followed. At all three stages of the procedure an appropriate investigation will be carried out.
- 2.2.2 When appropriate the Council will give consideration to whether the unsatisfactory performance is related to a permanent disability and, if so, whether there are any reasonable adjustments that could be made to the requirements of the job or other aspects of the working arrangements.
- 2.2.3 The Council will notify the employee in writing of the concerns over performance or reliability and the basis for these concerns and will invite the employee to a capability meeting to discuss the matter which will be conducted by the Town

Clerk or a panel of three (3) members of Council in the case of the Town Clerk. The employee will be given the opportunity to respond to the concerns and may be accompanied, if they wish, by a work colleague or trade union representative of their choice. The employee must take all reasonable steps to attend the meeting.

2.3 The purpose of the capability meeting is:

- to set out the required standards the Council considers the employee has not met;
- to establish the likely causes of poor performance or reliability (including any reasons why the measures taken so far have not led to the required improvement);
- to allow the employee the opportunity to explain the poor performance and to ask any relevant questions;
- to consider measures, such as additional training or supervision, which may improve performance;
- if appropriate, to agree to obtain relevant external specialist advice e.g. a medical report and/or referral to an occupational health adviser;
- to set targets for improvement and/or a reasonable time scale review;
- in a case where dismissal is possible to establish whether there are any further steps that could reasonably be taken to rectify poor performance or reliability;
- to establish whether there is any likelihood of the required standards or performance or reliability being met within a reasonable time;
- if appropriate to discuss at the final stage of the procedure where there is not any practical alternative to dismissal.

3. Stages and possible action

3.1 Following each capability meeting, the employee will be informed in writing of the decision and range of actions if applicable and notified of their right to appeal against the decision.

3.2 First capability meeting and warning

3.2.1 After the first capability meeting the employee may be given a formal capability warning. This warning will set out the areas in which they have not met the required performance standards, targets for improvement, and any other measures (such as additional training) which will be taken to improve performance. A time scale for review and the likely consequences of failing to improve to the required standards within the review period will also be set out in the warning. The capability warning will be recorded but nullified after six months, subject to satisfactory performance. The employee's performance will be monitored and at the end of the review period, Council will write to them to advise the next step. If Council is satisfied with the employee's improved performance no further action will be taken. If, however, Council is not satisfied with the employee's performance the matter may be progressed to the next

stage or, if Council feels that there has been a substantial but insufficient improvement, the review period may be extended.

3.3 Second capability meeting and final warning

3.3.1 Failure to improve performance in response to the procedure so far will result in a further capability meeting and if appropriate a final capability warning being issued. This will set out the area(s) in which the employee has still not met the required performance standards, a further time scale for review and the likely consequences of failing to improve to the required standards within the further review period (i.e. that dismissal will probably result). The final capability warning will be recorded but nullified after twelve months, subject to satisfactory performance.

3.3.2 The employee's performance will again be monitored and, at the end of the further review period, Council will write to the employee to advise the next step. If Council is satisfied with the employee's improved performance, no further action will be taken. If, however, Council is still not satisfied with the employee's performance, the matter will be progressed to the next stage or, if Council feels that there has been a substantial but insufficient improvement, the review period may be extended.

3.4 Final capability meeting and dismissal

3.4.1 If there is still a failure to improve performance in response to the procedures so far it will normally lead to dismissal. However, with appropriate notice Council may first consider redeploying the employee by agreement to another job if available which is more suited to their abilities. A dismissal decision will only be made after the fullest possible investigation and consideration of all possible options. The employee will be informed of the reasons for dismissal, the appropriate notice period, the date on which the employment will terminate, any payments due and how they can appeal against the dismissal decision.

4. Appeal

4.1 The employee may appeal against any decision under this capability procedure including dismissal within five (5) working days of the decision. Appeals should be made in writing to the Town Clerk and state the grounds for appeal. The employee will be invited to attend a meeting of an Appeals Panel made up of three (3) members of the Council who have not been involved in the matter to that date. At the appeal meeting, the employee will be given the chance to state their response and will have the right to be accompanied by a work colleague or trade union representative of their choice. Following the appeal meeting, the employee will be informed of the appeal decision, which will be final, and reasons for it, in writing and within five (5) working days of the meeting.

5. Medical conditions or disability

5.1 If the lack of capability to do the job is impaired due to medical conditions or a permanent disability, Council will consider taking independent medical or other specialist advice. The employee will be asked for permission for the Council (or

occupational health adviser) to approach the employee's medical adviser for access to their medical records. The employee has a right to refuse the Council access but Council will then only be able to make decisions based on the available information.

- 5.2 Council will consider making any reasonable and feasible adjustments to the employee's job role, working environment, hours and times of work and any other practical aids and adaptations to assist them to carry out the job role and/or return to work.
- 5.3 If despite these measures the employee's work performance continues to be below acceptable standards then Council will have to follow the procedure through to a possible dismissal on the grounds of incapacity to carry out the job but this will only be done as a last resort.

6. Review

- 6.1 These procedures are non-contractual and do not form part of the employee's contract of employment.
- 6.2 This procedure will be reviewed periodically by Council to ensure that it is effective and to reflect any statutory changes.