



Chilton Town Council

Capability Policy and Procedure

DOCUMENT CONTROL	
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1. Introduction

- 1.1 The Council is committed to the highest levels of competence and conduct and is striving to provide a working environment where every employee is encouraged to his or her full potential. It is recognised that discipline is necessary for the efficient operation of the Council and for the health and safety at work of all employees; and that capability procedures are necessary to assist in maintaining standards of performance and conduct and for promoting fairness in the treatment of individuals considered to be falling below acceptable standards.
- 1.2 The following procedure has been drawn up to provide a framework within which all capability and conduct matters can be dealt with fairly and without delay. It has been designed so that management and individual employees are aware of their rights and obligations.
- 1.3 It is emphasised that this procedure has been designed to encourage an improvement in an individual's performance or conduct where this is necessary and are not merely a method of applying disciplinary sanctions. In this respect it is accepted by all parties that line managers play an important role in the day-to-day support and supervision of their staff and they should seek initially to rectify problems through informal discussions without invoking the formal procedures.
- 1.4 Where matters cannot be resolved through the normal supervisory relationship or where alleged actions or omissions are considered to be of a more serious nature, the appropriate formal procedures should be followed.

2. Aims and Scope of the policy

- 2.1 These procedures apply to all employees of the Council except:
- The Town Clerk of the Council, for whom separate procedures apply.
 - Employees engaged on a casual basis.
- 2.2 The procedures **do not** apply in the following situations:
- Where employment is terminated on conclusion of a fixed term contract where the term of that contract expires without being renewed.
 - Termination of a temporary appointment where the reason for termination is that the need for employee's services has expired or is about to expire.
 - Termination of employment by reason of redundancy.
 - Resignation by the employee, or other termination by mutual consent.

3. Nominated Manager

- 3.1 The term "Nominated Manager" refers to the Corporate & Policy Officer or any Manager nominated by the Town Clerk for the purpose of carrying out any function under this procedure.

4. Availability

- 4.1 A copy of this policy can be viewed via the electronic filing folder or in the Constitution files. New employees will be informed of the existence of this policy in the induction information.

CAPABILITY PROCEDURE

- 1 Capability encompasses skill, aptitude, health or any other physical or mental quality and is usually distinguishable from conduct or misconduct, which should be dealt with under the disciplinary procedure. For example, an employee may not have the innate ability, or the standard of health required to reach the necessary standards for the job; in which case, the capability procedure is the appropriate vehicle for dealing with the situation.
- 2 This can be distinguished from cases where the employee is able to reach those standards but, for some reason, chooses not to do so. In such cases the disciplinary procedure may be appropriate.
- 3 Problems of capability need also to be distinguished from disability as defined by the Equality Act 2010. Assistance is available to help the individual and the employer to overcome problems associated with disability and advice should be sought from the appropriate Manager where necessary. The Manager and Town Clerk will consider any reasonable adjustments that will enable the employee to undertake his/her role to the required standards. It is particularly important that employees who become disabled during their employment are given assistance where possible and that recourse to the capability procedure is not the first consideration.
- 4 It is recognised that the Manager or Supervisor may have occasion, as part of the day-to-day management function, to draw attention to employees' minor inadequacies in performance without invoking the formal capability procedure. Employees themselves may also recognise problems and request a discussion. Early identification of problems relating to an employee's capability can, in many cases, lead to a resolution of the problem before there is a need to resort to formal procedures. Such action may include advice or firm guidance, and, in such cases, no formal written confirmation need be issued. However, where minor incidents are repeated, or in the case of more serious incidents, the following procedure should be followed.

DEALING WITH POOR PERFORMANCE

5 **STAGE 1 – Informal support and agreed improvement plan (Manager) (note on file and formal confirmation letter to employee)**

Time frame – up to 6 weeks

- 5.1 As soon as the Manager becomes aware that normal day-to-day supervision has failed to address an employee's unsatisfactory performance, the Manager should arrange to discuss the matter with the employee concerned.

This discussion should be used to:

- Identify those aspects of the employee's performance, which do not meet the required standards. This should be done with reference to the employee's agreed job description or work plan wherever possible.
- Ascertain the extent to which the employee realises and accepts that there is a problem.

- Give the employee the opportunity to give an explanation, including any mitigating circumstances (e.g. the context within which the employee works has changed significantly; health or personal problems).
- 5.2 If the employee's conduct is identified as having contributed to his/her unsatisfactory performance in the job, it may be more appropriate to consider action under the terms of the Disciplinary Procedure.
- 5.3 If the employee accepts that there is a problem and seeks to achieve an improvement, the employee and the manager should develop an action plan which will include:
- A statement by the manager indicating the specific areas of work which are unsatisfactory, and the level of improvement required in these areas.
 - The support and training to be given to the employee to assist him/her in achieving the level of improvement required.
 - A realistic timescale over which the improvement is required.
 - Ensuring that all other staff involved are fully briefed on, and implement, their part of the action plan.
 - The process for monitoring the employee's progress over this timescale.
 - The likely result if satisfactory performance is not achieved and sustained.
 - That the above will be recorded on the employee's personal file in the department together with any written comments or observations which the employee may wish to make.

Managers and the employee should use the Performance Review Document (Appendix A) to record the above points.

- 5.4 If the poor performance is identified as arising from long-term health problems, or frequent absence, the Manager may have to refer the matter to the Council's Medical Advisor and deal with the situation under the separate provisions relating to capability due to ill health.
- 5.5 If the health problem is short-term in duration, an action plan should be designed to support the employee so that s/he can contribute his/her best efforts until former health is restored.
- 5.6 A review meeting date should be agreed as well as specific action points and a date by which improvements are expected to be seen. It is essential that monitoring is undertaken throughout this process.
- 5.7 If at the review meeting all parties agree acceptable improvements have been made the matter will be regarded as closed. The manager may find it necessary to continue to monitor the employee's performance for a time to ensure that the required level of performance is sustained. In such cases the employee should be advised of this.
- 5.8 If the performance of the employee is so serious or if, at the informal stage the employee fails to engage with the process, the procedure would move directly to Stage 3 with a final written warning and a 4-week improvement plan.

5.9 If, at the review meeting, insufficient or no improvement has taken place you will progress to Stage 2.

6 STAGE 2 – Written warning and further improvement plan

Time frame - up to 6 weeks (Manager)

The employee may have an accredited trade union representative or work colleague attend any meetings at Stages 2, 3 and 4.

- 6.1 If insufficient or no progress has been made during the informal monitoring the employee should be informed that a **written warning** will be placed on the employee's file which will remain in force for a period of **12 months**.
- 6.2 You must ensure the Performance Review Document continues to be used to monitor against actions and targets set. A time frame for improvement (up to 6 weeks) and action points should be agreed.
- 6.3 It is vital that the monitoring process is on-going throughout the agreed period through interim review meetings; carried out effectively; and that the manager gives the employee on-going guidance on his/her progress towards the required improvement. Throughout this process the emphasis should be on helping the employee to improve.
- 6.4 During the period of support and training, the employee will be placed under appropriate supervision and observation in order to assist the process of improvement. The support and training might include measures such as the observation of other employees.
- 6.5 Following the monitoring period, a review meeting should take place with the Manager and employee concerned. This meeting should take place immediately upon the conclusion of the timescale specified in the agreed action plan, and the employee must receive adequate notice of the meeting which will include details of any specific issues to be discussed.
- 6.6 If at the review meeting all parties agree acceptable improvements have been made the matter will be regarded as closed. The manager may find it necessary to continue to monitor the employee's performance for a time to ensure that the required level of performance is sustained. In such cases the employee should be advised of this.
- 6.7 If, at the review meeting, insufficient or no improvement has taken place you will progress to Stage 3.
- 6.8 The above points should be confirmed to the employee in writing.

7 STAGE 3 – Final written warning and further improvement plan

Time frame – no more than 4 weeks (Manager)

The employee may have an accredited trade union representative or work colleague attend any meetings at Stages 3 and 4.

- 7.1 If insufficient or no progress has been made during the previous stages the employee will be informed that a **final written warning** will be placed on the employee's file which will remain in force for a period of **18 months**.
- 7.2 The employee will be given a final improvement period of no more than 4 weeks.
- 7.3 At this point the Manager should discuss with the employee the possible outcomes, including dismissal on grounds of capability, should the required improvement not take place.
- 7.4 The above points should be confirmed to the employee in writing.

8 STAGE 4 – FORMAL MEETING (Nominated Manager) (Consider Options including Dismissal)

In instances where the Town Clerk is the Line Manager the Formal Meeting will be held with the HR Advisor and Members drawn from the Personnel Sub-Committee.

- 8.1 If, after the agreed period, or if it becomes clear to both the Manager and the employee before that time, that the employee will fail to meet the required level of performance, the Nominated Manager will convene a formal meeting to discuss the matter. The purpose of the meeting will be to:
 - Confirm the specific areas of work which are unsatisfactory.
 - Confirm the standards required and determine whether those standards have been set at an unattainable level.
 - Remind the employee of the steps to assist him/her to improve work performance.
 - Discuss the outcome of the monitoring period.
 - Establish the shortcomings.
 - Establish if this is due to poor performance, misconduct or ill health.
 - Consider the options available.
- 8.2 The employee must be informed in writing of the date, time and venue of this meeting, together with the names of the Managers to be present, the matters to be considered and the possible consequence. The letter should ideally be handed to the employee personally or sent to the employee's home address by first class post. 5 working day's notice should be given prior to the meeting taking place. The right to be represented by a trade union or other representative should also be given.
- 8.3 All correspondence will be copied to the employee representative unless the employee indicates otherwise.
- 8.4 At the meeting the employee must be informed of the details of the shortfalls in work capability and the measures implemented to facilitate improvement. The employee should be given the opportunity to present relevant information.
- 8.5 If, at the meeting, the employee is able to advance acceptable reasons to counter the allegation of lack of capability, no further action will be taken under the capability procedure and the meeting will be terminated.

- 8.6 In situations where there may be an underlying medical reason for the incapability, the meeting will continue under paragraphs 11 and 12 of this procedure. Where the poor performance is due to misconduct any further handling of the matter will continue under the provisions of the Disciplinary Procedure. The Capability Hearing shall be terminated at this point, and a further Disciplinary Hearing convened.
- 8.7 The Nominated Manager will inform the employee in writing of the decision, together with the reasons for the decisions and the right of appeal.

9 OPTIONS

- 9.1 Taking into account the support given to achieve an improvement in performance, and improvement actually achieved, and any points of view put forward by the employee, the Nominated Manager will consider the following options.

Extend the period of the action plan

- 9.2 This will give the employee a further opportunity to achieve the required level of work performance. The Nominated Manager should at this point issue the employee with a final written warning (confirmed in writing) that, unless the required improvement is made within a specific period of time, further action could be taken which could result in dismissal.
- 9.3 After the prescribed interval, the employee should be interviewed again by the Nominated Manager in order to be informed of the view now taken of his/her competence. If the performance is regarded as satisfactory, the employee should be informed of this fact in writing and the matter may be regarded as closed.
- 9.4 If performance is still not satisfactory, then one of the remaining courses of action identified below should be taken.

Redeployment

- 9.5 An opportunity for redeployment into alternative employment can be considered. However, it must be made clear to the employee that such redeployment can only be offered if a suitable vacancy arises and if the employee is suitable for that vacancy. Any redeployment opportunity will not necessarily be to an equivalent post or earning level and current earnings **will not be protected**. During such a period appropriate retraining will be given.
- 9.6 Any redeployment will be with the agreement of the employee, although this will depend on reasonableness and the redeployment opportunities available at the time.
- 9.7 The employee should be formally warned that failure to perform to acceptable standards will lead to further action being taken which could result in dismissal.

Dismissal

- 9.8 Where all other options under this paragraph are either not suitable or have been tried and failed, appropriate notice will be given to terminate the employment on the grounds of incapability.

10 APPEALS PROCEDURE

- 10.1 The employee can appeal against a first written warning, a final written warning and dismissal. There is no appeal against Informal Action.
- 10.2 The time scale for requesting an appeal will be five working days from the date of the written confirmation of the outcome of the investigation.
- 10.3 A pro-forma (see the Council's Appeal Procedure) should be included on which the employee can give notice of appeal, including identification of the grounds for the appeal.
- 10.4 Records and notes of the meetings will be made available to the Member Appeal Panel prior to hearing the appeal. (Elected Members drawn from the Council's Personnel Sub-Committee and the Town Clerk if the allegation is not against him.)
- 10.5 Employees will be contacted with the appeal arrangements as soon as possible and will be informed of their right to be accompanied at the appeal meeting by a work colleague or accredited trade union representative.
- 10.6 The employee and his/her representative will present the details of the grievance to the Member Appeal Panel and the Nominated Manager, will outline the reasons for the management decision.
- 10.7 The Town Clerk or Member Appeal Panel Chairman will inform the employee about the appeal decision, and the reasons for it, in writing within five working days of the appeal hearing.
- 10.8 The decision of the Member Appeal Panel will be final.

11 Where Health appears to be Affecting Capability

- 11.1 Capability as a reason for dismissal can involve health considerations, including injury and physical incapability. Where it is felt, or claimed, that an employee's capability is being affected by an underlying health problem, the following steps should be undertaken:
- 11.2 From the onset of the health problem, the Manager should keep in regular contact with the employee to discuss the nature of the illness, the expected duration of absence and the prognosis for the future.
- 11.3 If there is no indication of a return to work in the reasonably foreseeable future, or if there are any doubts about the employee's current state of health or current prospects for improvement, the employee should be consulted and advised that the advice of the Council's Medical Advisor will be sought for a report on his/her condition and prospects.
- 11.4 If the Medical Advisor's report does not indicate a return to work within an acceptable

period taking into account the interests and needs of the Council, consideration will have to be given as to whether the continued employment of the employee is reasonable in the circumstances, having regard to the effects of the absence on the performance of the job.

- 11.5 The Nominated Manager should convene a meeting with the employee who may be accompanied by a work colleague of his/her choice not acting in a legal capacity.

The purpose of the meeting will be to:

- Investigate the circumstances of the illness in consultation with the member of staff.
- Establish up-to-date information regarding the current medical position and the prognosis.

- Seek to explore the options available and provide a mutually acceptable solution.
- Issue a formal warning to the employee as to possible outcomes.

12. OPTIONS

Adjustments in the Workplace

- 12.1 If the effect of the illness or injury is such that the employee can return to work but is left with a physical or mental impairment which has a substantial and long term adverse effect on his/her ability to carry out normal day-to-day activities, it will be necessary to consider what reasonable adjustments can be made in the workplace to accommodate the needs of the employee in order to undertake the full requirements of the role, whether within the employee's current job or in alternative employment.
- 12.2 If the employee is expected to return to work and ultimately make a full recovery, there may be occasions where a phased return to work, or a return to partial duties in the short term, can be accommodated.

Alternative Employment

- 12.3 An opportunity for redeployment into alternative employment can be considered. However, it must be made clear to the employee that such redeployment can only be offered if a vacancy arises and if the employee is suitable for that vacancy. Any redeployment will be subject to an appropriate trial period. A redeployment opportunity will not necessarily be to an equivalent post or earnings level and current earnings will not be protected. Any redeployment will be with the agreement of the employee.
- 12.4 Employees who are found mutually acceptable alternative employment as an alternative to dismissal under this procedure must be given appropriate induction, job training and support in order to allow them to settle and become fully productive in their new job as soon as possible

Dismissal on the Grounds of Ill Health

- 12.5 If the Medical Advisor's opinion is that the employee will not be permanently prevented from performing his/her duties, but the timescale for a return to work is not acceptable to the Council, taking into account the interests and needs of the Council, and other options have proved unsuitable or unsuccessful, then the employee will be dismissed on the grounds of capability due to ill health. The appropriate notice will be given.

Appeals Procedure

- 12.6 The Nominated Manager will inform the employee in writing of the decision, together with reasons for the decision, and the right of appeal. The appeals procedure will be as detailed in point 10 above.

CHILTON TOWN COUNCIL

PERFORMANCE REVIEW

Self-appraisal section (please complete sections 1 – 8 prior to performance review)

1.

Name _____

Title _____

Date _____

2. Do you feel you are getting along with work and colleagues? YES / NO

(If no, please give details)

3. Is there any part of your work that you feel further instruction is needed? (If yes, please give details) YES / NO

4. Are there any difficulties or concerns you have in carrying out your work? Are there any obstacles outside your own control, which prevent you from performing effectively? (If yes, please give details) YES / NO

5. Please list anything you would like to discuss concerning your employment, progress or training.

6. How would you rate your:

POOR AVERAGE GOOD

Appearance			
Timekeeping			
Attitude to supervisors			
Attitude to colleagues			
Team working			
Communication			
Customer care skills			
Attention to detail			

7. What part of your job do you think that you:

- a) Do best?
- b) Do less well?
- c) Have difficulty with?
- d) Enjoy?
- e) Don't like doing?

8. Do you have any suggestions on how your job could be improved?

9. Is there anything else you would like to discuss which has not been covered?

Please complete and return this form to your Manager at least two days prior to the performance review discussion

