

Capability Procedure

Adopted on September 21st 2020

Introduction

The Council appreciates that from time to time staff may experience difficulties, which impact on their ability to carry out their work. The Council recognises that poor job performance due to incapability cannot be treated as a disciplinary offence.

There can be reasons for poor job performance other than misconduct. In the interests of dealing with such problems fairly and consistently, the Council has set out the following procedures, which are not part of the disciplinary procedures that apply to misconduct.

The Council recognises its responsibilities for Employees and duties under the Health and Safety at Work Act 1974 and the Equality Act 2010, to manage issues relating to staff capability sensitively, in so far as is reasonable and able to do so. These procedures will be adopted in the interests of fairness for the Management and support of Employees who, due to capability are unable to attend work. Such systems should assist the Employee in making a return to work, in so far as it is practicable.

Capability is dealt with by the Council under 2 headings:

- Managing Performance
- Managing Attendance – long-term sickness absences

Procedures

Managing Performance - Investigation

The procedure for managing performance will apply where an Employee is clearly making every effort to fulfil the requirements of the post, but is unable to do so due to reasons such as, changes in the role; loss of skills, ability and/or knowledge, impact of physical or mental impairment.

The cause of poor performance will be investigated and established by the Council. You will be asked to provide an explanation as to the reasons for poor performance and the explanation will be checked.

Incapability/poor performance will arise where you have been set realistic targets and objectives and cannot achieve them through no fault of your own. (An example of capability is failure due to medical conditions).

If realistic targets and objectives have been set out but you fail to take action of which you are capable, your performance may be treated as misconduct under the Disciplinary Procedure.

At each stage of the procedure and as specified below you will normally be interviewed by the Clerk to review the relevant factors.

At any interview or an appeal meeting, you will have the opportunity to state your case and will be encouraged to do so. You also have the right to be accompanied by a work colleague, or recognised Trade Union Representative. Legal representation will not be permitted; the Council Capability Procedure is an internal process and will be conducted as such.

All warnings will be confirmed to you in writing.

Stage One: Training and Supervision

Where the reason for poor performance is lack of capability, you will be invited to comment and to contribute to a discussion about steps to assist you to reach the required standards. These may include:

- Appropriate training in-house and/or externally sourced, if this has not already been done.
- More frequent supervision and support
- Assessment of the post to ensure the role is not inconsistent with your selection for the appointment.

Arrangements will be made to carry out any remedial measures and to review progress and performance at the end of an appropriate period of time. You will be advised that failure to meet the specified standard of improvement will result in the next stage of the procedure being implemented.

Stage Two: First Written Warning

If, despite following the agreed measures and at the end of the review period, the required improvement in performance is not forthcoming, you will be given a First Written Warning by the Council. This will state:

- The reason for the warning;
- The level and improvements in performance required;
- A realistic time limit for achieving that performance;
- The form in which monitoring will take place;
- That the consequence of failure to achieve and maintain the improvement would result in a final written warning being given;
- The duration of the warning held on your personnel file;

First written warnings will have a time limit of 6 / 12 months.

Stage Three: Final Written Warning

If there is no improvement or not sufficient improvement or it is not maintained for the period stated, you will be given a Final Written Warning setting out the details as above with a written warning that failure to improve may result in dismissal. Final written warnings will have a time limit of 12 months.

Stage Four: Dismissal

If there is still no improvement or not sufficient improvement or it has not been maintained for the period stated above, you will normally be dismissed with notice.

Appeals

If you wish to appeal against stages 2,3 or 4, your appeal must be made to the Council. You must put your request in writing, setting out the grounds of appeal, within 7 working days of the decision being communicated to you. The appeal will be heard by an Appeal Panel made up from the Council. The appeal hearing will be conducted within a reasonable period of the appeal being lodged. The outcome will be either:

- a) to reject the appeal and confirm the original disciplinary action, or;
- b) to uphold the appeal and reduce or revoke the original disciplinary action.

The result of the appeal will be confirmed in writing within 10 working days of the hearing. The decision at the appeal stage is final of this internal policy.

Managing Attendance:

The Council should ensure that they have taken into consideration fully the following aspects before coming to a decision on the management of sickness absence:

- The nature of the illness
- The likelihood of it recurring or some other illness arising
- The length of the absences and the periods of good health between them
- The need for the work done by the Employee
- The impact of the absence on other workers
- The policy and how well it has been carried out and in particular, the need for medical assessment when considering dismissal
- The extent to which the difficulty of the situation and the position of Parish Council has been made clear to the Employee, so that the Employee realises the full implications of action being considered.

In the application of the following procedure, the Council should ensure:

- Following each stage, a letter is sent to the Employee confirming the key points and actions.
- All correspondence should be marked 'confidential' when writing to the Employee
- Reasonable adjustments have been considered throughout the process
- Where there is a difference of opinion regarding the medical advice received, an independent assessment is sought.
- Advice is sought and other specialist resources are appropriately involved.

Short Term Sickness Absence

Where your sickness record shows that there has been a series of short term absences, from 1 to 5 days, frequent in nature and in excess of those for either their team or the Council as a whole, when assessed over a period of 3, 6 and 12 months, the Council will arrange to review the matter with you under the 'Return to Work Meeting' procedure.

Long Term Sickness Absences

Where your sickness absence is in excess of 30 days and the nature of the sickness either indicates that there is an underlying problem or is one which suggests it may be long term, the Council will consider the following throughout the process, to the extent that is reasonably practicable:

- The need to make reasonable adjustments and look at alternative work arrangements.
- The need to initiate support, counselling or rehabilitation.

It is recognised that all long-term sickness cases are different and therefore the reason for the absence will determine the action to be taken.

Stage One:

The Council will:

- a) Ensure they are aware of the reason for your absence
- b) Maintain regular contact with you including home visits where appropriate
- c) Try to determine the likelihood of your return to work

Stage Two:

If the reason for your absence indicates that a return to work is highly probably, e.g. a broken limb or a minor back injury, the Council will maintain contact and establish a return to work date with you. It may not be necessary to seek medical advice during the absence.

If the reason for your absence is unclear as to a likely return to work, medical advice must be sought.

The Parish Council will:

- a) Write to you to seek your written consent for the Council to obtain a medical report from your doctor or alternatively to refer you to an independent Occupational Health Practitioner for a medical examination or report. This will be done in line with your rights under the 'Access to Medical Reports Act, 1988'.
- b) Agree to review the progress, either following the receipt of appropriate advice, or earlier, where this is appropriate.

The medical advice will indicate whether or not you are fit to return to full duties, or alternative duties, and the prospect for the future.

Note: Where an Employee refuses to give their consent as outlined in a) above, the Council will base their decisions on the facts available.

Stage Three:

The Council will:

- a) Obtain all the necessary internal and external advice
- b) Review any medical reports
- c) Look at all available options
- d) Establish a way forward

At each stage, in conjunction with you and having established the appropriate level of support required, the Council will assist you in making a return to work.

Stage Four:

If the medical advice indicates you are not yet fit enough to return to full duties but could undertake light/alternative duties in the meantime, every effort should be made to accommodate this.

If the medical advice indicates that you are not able to return to full duties in the future, but could undertake alternative duties, this should be considered but cannot be guaranteed. If this is possible, full discussions will take place with you. If this is not possible, you will be informed that your employment will be terminated with notice.

If the medical advice indicates that you are not able to return to work in the future, including alternative duties, or are unable to return within a time span which is operationally acceptable, provided all aspects, including your needs, have been considered, you will be informed that your employment will be terminated with notice.