

HUNTINGDON TOWN COUNCIL  
1 TRINITY PLACE  
Hartford Road  
HUNTINGDON  
PE29 3QA

TEL: 01480 388688

FAX: 01480 388686

<b>CAPABILITY POLICY</b>
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1. **Purpose and Scope**

This procedure is designed to help and encourage all employees to achieve and maintain satisfactory standards of work performance and to encourage improvement where necessary. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the Employment Act 2002 and the Employment Act 2002 (Dispute Resolution) Regulations.

2. **Principles**

- (i) It is the Council's policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts.
- (ii) If recourse to a formal capability procedure is deemed necessary the Council will ensure that
  - the employee is given a written statement of the reasons for concern;
  - a discussion about the employee's poor performance is held; and
  - the employee is given the right to appeal.
- (iii) In serious cases of gross negligence the Disciplinary procedure will be used and dismissal without previous warnings may be the appropriate sanction.
- (iv) This procedure (including any time limits) may be varied as appropriate to a particular case.

### 3. The Procedure

#### 3.1 Informal Discussions

In the first instance, performance issues should normally be dealt with informally between the employee and the employee's manager. Informal discussions may be held with a view to (for example)

- clarifying the required standards;
- identifying areas of concern;
- establishing the likely causes of poor performance and identifying any training needs;
- setting targets for improvement and/or
- agreeing a time-scale for review.

Where informal discussions have not resulted in a satisfactory improvement or in more serious cases the formal procedure set out below should be used.

#### 3.2 Formal Procedure

A discussion will be held at each stage of the capability procedure. A meeting at each stage of the capability process will be taken into consideration and in the interests of speed and efficiency a telephone conversation may be substituted for a face-to-face meeting with the employee's consent. However the final stage of the process will normally give rise to a face-to-face meeting. Correspondence with the employee may be undertaken by e-mail.

##### Stage 1 – Meeting – Action Planning

Unless it is impractical to do so, the employee will be given at least 5 working days written notice of the date, time (and place if appropriate) of the discussion about work performance. The letter will also outline the concerns over the employee's performance and the basis for those concerns. The employee will have a reasonable opportunity to consider this information before the meeting.

The discussion will normally be held by the employee's line manager. The employee may be accompanied by a work colleague or trade union representative during the discussion.

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The employee must take all reasonable steps to undertake the discussion. Failure to undertake the discussion without good reason may be treated as misconduct. If the employee or the accompanying person cannot attend at the time specified the employee should inform the manager immediately and the manager will seek to agree an alternative time.

During the discussion the line manager will:

- discuss the evidence of poor performance collated;
- allow the employee to comment and explain the employee's side of the story; and
- allow the accompanying person (if any) to ask any questions.

The manager will then close the discussion. The employee's input will be considered before he/she is informed of any decision within 5 working days (unless this time scale is not practicable, in which case the manager will confirm this information as soon as it is practicable).

Following the meeting, the manager will write to the employee, setting out the findings from the discussion and his or her decision (no warning, first or final warning) and the employee's right to appeal against the decision. If the manager finds the employee's performance to be unsatisfactory he/she will provide the employee with an action plan, under cover of the same letter, which will set out;

- the performance problem;
- the improvement that is required;
- a review date (normally 3 to 6 months hence);
- the support (if appropriate) that the Council will provide to assist the employee.

The letter will also state that the warning is the first stage of the Council's capability procedure and that failure to improve in accordance with the terms of the action plan will lead to a further or final written warning and could ultimately lead to dismissal, unless significant improvement occurs.

A first written warning given to the employee as a result of this procedure will normally remain on the employee's record for 6 months, after which time the warning will be disregarded for the purpose of the capability procedure. A copy of the action plan will be kept by the Council and used as the basis for monitoring and reviewing the employee's performance up to the review date.

### **Stage 2 – Review Meeting**

Unless otherwise agreed, the review discussion will be held on or close to the date set out in the action plan, whereupon the Manager will;

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- discuss with the employee any continued evidence of poor performance, or alternatively evidence of significant improvements in performance.
- allow the employee to give his or her side of the story; and
- let the accompanying person (if any) ask questions.

The review meeting will then be closed. The manager may not inform the employee of any decision during the discussion, as s(he) will need time to assess the employee's input before arriving at a decision. The employee will be informed that a) significant improvement has occurred and there is no further need to pursue the capability procedure or that b) a further discussion will be held at Stage 3.

### **Stage 3 – Meeting – Final Written Warning**

Following a first written warning and at the end of a further period, during which time the employee is given a further opportunity to improve, if there has been no improvement, the employee will be invited to undertake a further discussion or meeting with the Town Clerk setting out the issues in writing and informing the employee of his or her right to be accompanied. At the meeting, as before, the employee will be given an opportunity to state his or her case before closure of the meeting.

If the Town Clerk decides that there has been a failure to improve within the timescale set out in the action plan, the employee will be issued with a final written warning. The final written warning will give details of the failure to perform. It will also warn the employee that failure to improve will lead to dismissal and refer to the employee's right to appeal. Again, the steps required to prevent dismissal will be set out in an action plan addressed to the employee.

A final written warning given to the employee as a result of this procedure will normally remain on the employee's record for 12 months, after which time it will be disregarded for the purposes of the capability procedure. A record of the warning will form a permanent part of the employee's personnel record. A copy of the second action plan will be kept by the Council and used as the basis for monitoring and reviewing the employee's performance up to the second and final review date.

### **Stage 4 – Final Review Meeting**

Unless otherwise agreed, the review meeting will be held on or close to the date set out in the action plan, whereupon the Town Clerk will;

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- discuss with the employee any continued evidence of poor performance, or alternatively evidence of significant improvements in performance.
- allow the employee to give his or her side of the story; and
- let the accompanying person (if any) ask questions.

The final review meeting will then be closed. The Town Clerk may not inform the employee of any decision at the meeting, as time will be taken to assess the employee's input before arriving at a decision. The employee will be informed that either a) significant improvement has occurred and there is no further need to pursue the capability procedure or that b) a further meeting will be held at Stage 5 and that dismissal is a possible outcome.

### **Stage 5 – Potential Dismissal**

If following a final written warning and at the end of a further period, during which time the employee is given a further opportunity to improve, there has been no improvement, the employee will be invited to a further meeting with the Town Clerk setting out the issues in writing and informing the employee of his or her right to be accompanied. At the meeting, as before, the employee will be given an opportunity to state his or her case. The meeting will then be closed.

If there has not been sufficient evidence of improvement or sustained satisfactory performance presented at the final review meeting, the employee will receive written confirmation of the terms of their employment termination on the grounds of the capability and the basis for the decision. A decision to dismiss will only be taken by the Town Clerk. The employee will be informed of his or her right to appeal.

### **Appeals**

The employee may appeal against any formal disciplinary action taken against them by the Council under the Capability Policy. The appeal must be in writing, stating the full grounds of appeal, addressed to the Town Clerk, within one week of the date on which the employee was informed of the decision.

The appeal hearing will be heard by the Staffing Sub-Committee. Wherever possible the Town Clerk will give the employee at least 5 days' notice of the appeal hearing. In any event the appeal hearing will be held as soon as possible. The employee has a right to be accompanied by a colleague or Trade Union representative.

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Following the hearing, the Council may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different outcome (at an equal or lesser, but not higher level than the original penalty).

The final decision will be confirmed to the employee in writing, if possible, within one week of the appeal hearing. There will be no further right of appeal.

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