



SHREWSBURY TOWN COUNCIL

CAPABILITY PROCEDURE

AIMS OF THE POLICY

The purpose of Shrewsbury Town Council's Capability Procedure is to help and encourage staff to achieve and maintain required standards of work performance.

The aim is also to ensure that the Town Council's services are maintained and effective while all staff are treated fairly, effectively and consistently.

This policy sits alongside the Town Council's Disciplinary Procedure to clearly distinguish between the issues of conduct (an employee's behaviour at work) and capability (an employee's ability to do their job).

CAPABILITY ISSUES RELATED TO POOR PERFORMANCE

This procedure is a framework for dealing with cases of poor performance in a fair and supportive way. It is the Town Council's responsibility to identify any performance issues as early as possible and take steps to resolve these issues informally by providing supervision, training, counselling and support measures to assist staff to reach the acceptable standard.

This procedure also provides a clear and fair process for the termination of employment in cases where the employee is not reaching the acceptable standard of performance and issues are not able to be resolved.

CAPABILITY ISSUES RELATED TO ILL-HEALTH

Where a employee's capability issues are linked to ill-health these cases should be dealt with under the absence management procedure. Every effort will be made to assist a employee with their rehabilitation and eventual return to work, including exploring all options for redeployment and other workplace adjustments.

Properly reported sickness absence where the employee is ill will never, on any grounds, be subject to disciplinary procedures. Disciplinary procedures will only be applied where absence is unauthorised, or where there are reasonable grounds for believing that a employee's prior claim/s of absence are not accurate, or where there is wilful poor performance.

The Town Council is committed to supporting terminally ill employees with dignity, respect and compassion. Where a employee has been diagnosed with a terminal illness, managers will need to be particularly sensitive. A employee with a terminal diagnosis will not be subjected to this capability procedure nor dismissed because of their condition.

COMPLIANCE WITH ACAS CODE OF PRACTICE

This capability procedure follows the [ACAS Code of Practice on Disciplinary and Grievance Procedures](#) issued under section 199 of the Trade Union and Labour Relations (consolidation) Act 1992.

COMPLIANCE WITH THE EQUALITY ACT 2010

In accordance with the Equality Act 2010 the Town Council will not discriminate against disabled employees but will consider and accommodate all reasonable adjustment needs within a reasonable timeframe.

SCOPE OF POLICY

This policy applies to all staff who are employed by the Town Council including part-time and temporary employees, regardless of hours worked or length of service.

All new members of staff will be made aware of this policy and procedure, and how it operates as part of their induction.

GENERAL PRINCIPLES

- **Fairness** – This procedure sets out to treat all staff fairly, consistently, impartially, promptly, reasonably and will be applied without discrimination. Employees will be heard in good faith and there will be no prejudgement of the issue.
- **Investigation** – No decision about dismissal will be taken until a case has been thoroughly investigated and all options for support have been exhausted. When starting an investigation or appraisal of poor performance, there shall be no assumption that dismissal will automatically follow.
- **Representation** – The employee at all stages in this procedure has the right to be represented and accompanied by their trade union representative, full-time union official or work colleague.
- **Confidentiality** – All documentation and records relating to this procedure including notes of meetings will be treated as confidential, stored securely and only accessed by those individuals essential for dealing with the case. They will be kept no longer than necessary in accordance with Shrewsbury Town Council's data protection policy. Any breach of confidence may be treated as a disciplinary case of misconduct.
- **Natural Justice** – At all stages of this process the employee will be given a full explanation with examples of where they are not meeting the required standard and/or what improvement in attendance is expected in writing, and will be given the opportunity to state their case before any decision is taken.
- **Right to appeal** – At all formal stages of this policy the employee has the right to appeal. The appeals will be heard in an appeal meeting by senior manager/s who previously had no involvement with the case.
- **Recordings** – Audio/ visual recordings of the proceedings by the employee or their companion or by the Town Council are not acceptable at any stage of this procedure. Any use of surveillance evidence submitted as part of the case must comply with the Town Council's Data Protection Policy.
- **Equality and diversity** – This procedure will be applied without discrimination. If someone has an existing mental or physical health impairment which they have previously disclosed, the Town Council will make reasonable adjustments to the process as necessary. Where an employee's capability issues are linked to ill-health or a mental or physical health impairment, it is important that the employee informs the Town Council.

RESPONSIBILITIES OF MANAGERS

Line managers should ensure that all employees are aware of this policy and understand their own and the Town Council's responsibilities.

Line managers should exhaust all options for support and other means of achieving the required standards outlined before formal capability action is taken.

Line managers should be aware of the potential for discrimination when managing absence, particularly where the employee's ill health is related to pregnancy or disability.

Line managers are responsible for the prompt implementation of reasonable adjustments for employees with a disability.

Line managers must respond promptly and within the timescales as required as part of this capability procedure.

Line managers will be given training on how to operate this procedure fairly, effectively and consistently and in line with all its general principles.

RESPONSIBILITIES OF EMPLOYEES

All staff should familiarise themselves with relevant Town Council policies, rules and procedures, and cooperate with their line managers and supervisors to ensure that they fulfil them. Full details can be found in the staff handbook and on Vivup.

TRADE UNION INVOLVEMENT

Consultation will take place with the recognised trade union on the implementation, development, monitoring and review of this procedure.

REVIEW AND MONITORING

The Town Council will ensure that all new employees, supervisors and managers will receive induction on the procedure.

Adequate resources will be made available to fulfil the aims of this procedure. The procedure will be widely promoted, and copies will be freely available and displayed in the Town Council's offices and on Vivup.

This procedure will be reviewed on a regular basis.

RESOLVING PERFORMANCE ISSUES INFORMALLY

Where the line manager first establishes that an employee's performance is unacceptable, an informal discussion will be held with the employee to establish the reasons for the poor performance.

A line manager will invite an employee to an informal meeting to discuss the performance issue. The written confirmation must also include date, time and venue of meeting, a copy of this capability procedure and a copy of the employee's job description.

The purpose of this meeting is to find a solution and a way forward should be agreed. The line manager should confirm the expectations of the role and the standards required and will provide a full explanation of where the employee is not meeting the required standard.

The line manager should define the expected standard of performance and give examples. The line manager should then examine the occasions where these standards have not been met by the employee and establish the reasons why the desired level of performance has not been achieved. The line manager should try and establish if there are any outside factors that could have impacted on the employee's performance. Some of these could include excessive workloads, limited resources, lack of training, ill-health, changes in management and the employee's personal circumstances.

The line manager must take into account the employee's perception of how they are performing and any evidence the employee can present to support their case.

The employer should consider the circumstances around the employee's performance issues. Options available at this stage would include:

- Training/re-training/development
- Referral, where appropriate, to Occupational Health
- Mentoring / coaching
- Closer supervision for a limited period
- Temporary alterations to duties, which do not change the job, but allow the employee to develop at a slower pace.

If the line manager has accepted the mitigating reasons around an employee's poor performance, no further action will be taken.

If the line manager still has concerns about the employee's ability to work to the required standard, an action plan with 'SMART' targets should be set with an agreed review date (normally within 4-6 weeks of the informal meeting). SMART targets should always be Specific, Measurable, Achievable, Result-focused and Time-bound.

As part of the action plan, any areas or outside factors that have been identified as having had an impact on the employee's performance, should be addressed. For example, the line manager may review a employee's workload or offer a employee more training or a mentor to help support them. Before agreeing to an action plan, employees have the right to discuss and review the action plan with their trade union representative. A clear monitoring and feedback procedure should be established, and the employee needs to be clear on what they have agreed to.

Where an employment relationship has broken down, the Town Council may wish to involve an outside mediator to agree an action plan. This mediator will work with the line manager and employee to set SMART targets and objectives with long (3 month) and short term (1 week) deadlines for meeting the targets. The action plan should be agreed by all parties.

The consequences of not meeting these deadlines should be made clear, that the capability procedure will move onto the formal procedure.

Should the informal discussion establish that the poor performance constitutes employee negligence or misconduct, the Town Council's Disciplinary Procedure will be followed.

Formal Procedure

If improvements in performance are not achieved informally or the employee is unlikely to be well enough to return to work within a reasonable time period, then a manager may decide that further action may be necessary and the formal procedure will be instigated.

In the case of ill-health, formal meetings may take place remotely, where it is not possible to hold a face-to-face meeting. The Town Council's will ensure that the employee and their companion have access to all technology required for participation.

The Town Council also recognises that the employee's health condition or impairment may mean that an alternative venue to the workplace is required as an adjustment.

STAGE 1: REVIEW MEETING

A formal review meeting will be arranged between a senior manager, the line manager, *HR Team* employee and their companion.

The employee must be given written confirmation of the meeting – including the date, time and venue of the meeting. This should happen within ten working days of the informal procedure ending.

The written confirmation must also include examples of where the employee has not met the desired performance or examples where the employee has not completed targets on their action plan, a copy of this capability procedure, a copy of the employee's job description, names and job titles of all those invited to the formal meeting.

It should also state that the employee has the right to be accompanied to the meeting by their trade union representative, full-time union official or work colleague.

The letter should outline possible outcomes from the meeting including recommending redeployment to another post (if appropriate).

The employee should take all reasonable steps to attend the meeting on the date / time stated in the employer's letter. However, the meeting will be rescheduled to another time if they or their companion are not available at the chosen time. In these cases the employee must propose another date within five working days of the original meeting date.

If the employee is unable to attend the meeting they must state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence. Each case will be assessed on its own merits, but the prime objective is to minimise any delays in holding meetings.

The meeting will cover:

- Exploration of the unsatisfactory performance, including reviewing all internal documentation that was taken during the informal process to see if any improvements have been made
- A review of the SMART targets that were set and timescales for improvement
- Review of the outcome of any training that has been provided
- Review of any other evidence from the employee and line-manager to establish if any improvements have been made
- Options on possible remedies with any retraining support.

If the capability issues are around ill-health or the employee has a disability, then the senior manager will need to review if any adjustments have been made to support the employee and if the adjustments have helped, to review details of other support that has been considered, including what has not been done and why, any medical evidence, for example an [occupational health report](#), and if someone is off work, their opinion on how long they might be unable to work or how much disability leave they might need.

During the meeting both parties will outline and explain their position and can table evidence that support their case.

Any documentation either party intend to use in the meeting should be submitted to the HR Team within a reasonable time of the meeting so that copies can be shared.

After the meeting the senior manager will review all the evidence and decide what action to take or recommend. At this stage the following options are available:

- No further action
- After reviewing the evidence, implementing a second action plan (with SMART targets and deadlines), with a date for a second review meeting set within 1-3 months following the first formal meeting
- Recommending changing working practices – for example a change to the employee's working pattern
- Recommending training.

The employee will be formally warned that a failure to improve to the required standard may result in moving to Stage 2 of this procedure.

In cases where capability issues are on ill-health grounds, the senior manager can recommend that the employee take extended sick leave or disability leave until the employee is certified fit by occupational health.

The employee will be informed of the decision taken by the senior manager in writing within five working days of the formal meeting. The letter will cover:

- The capability issues
- Any decision that has been made and the reasons for that decision
- Any action plan with deadlines and SMART targets with date of review meeting
- The employee's right to appeal.

APPEAL

Appeals can be lodged by the employee to the Town Clerk within ten working days of the decision taken in the formal meeting.

Appeal meetings will normally take place within 14 days of receipt of the employee's written notice of appeal. The employee has the right to be accompanied by their trade union representative, full-time union official or work colleague.

The appeal will be heard by an appeal panel of at least two senior managers who have had not been involved in the original investigation or appraisal, nor the decision to impose the capability action.

Decisions on appeals will be final and the employee will be informed in writing within five working days after the appeal date.

STAGE 2: REVIEW MEETING AND IMPROVEMENT NOTE

Following an agreed period of time, if improvements in the employee's performance have not taken place, the senior manager will invite the employee to attend a second formal review meeting.

The written confirmation of the meeting should make clear that one of the outcomes from this meeting could be that the employee's case is progressed to Stage 3. It should set out their right to be accompanied in this meeting by their trade union representative, full-time union official or work colleague.

The employee should take all reasonable steps to attend the meeting on the date / time stated in the employer's letter. However, the meeting will be rescheduled to another time if they or their companion are not available at the chosen time. In these cases the employee must propose another date within five working days of the original meeting date.

If the employee is unable to attend the meeting they must state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence. Each case will be assessed on its own merits, but the prime objective is to minimise any delays in holding meetings.

The meeting will cover:

- Exploration of the unsatisfactory performance, including reviewing all internal documentation that was taken during Stage 1 of this procedure to see if any improvements have been made
- Exploration of the areas where the employee has not met the required standard
- Targets for improvements
- Identifying if there are any further measures that could be put in place
- The period for review

- The consequences of failure to improve.

If the capability issues are around ill-health or the employee is disabled, the senior manager will need to review if any adjustments have been made to support the employee and if the adjustments have helped, to review details of other support that has been considered, including what has not been done and why, any medical evidence, for example an [occupational health report](#), and if someone is off work, their opinion on how long they might be unable to work or how much disability leave they might need.

During the meeting both parties will outline and explain their position and can table evidence that supports their case.

Any documentation either party intend to use in the meeting should be submitted to HR Team within a reasonable time of the meeting so that copies can be shared.

After the meeting, the senior manager will review all the evidence and decide what action to take or recommend. At this stage the following options are available:

- No further action
- Recommending a time period for a review of progress and setting a date for the review meeting
- Recommending redeployment to another post – this could be to another post with a lower salary. In cases where redeployment is due to ill-health capability then salary and conditions of service will be protected
- In cases where capability issues are on ill-health grounds, the senior manager can recommend that the employee take sick leave until the employee is certified fit by occupational health.

The employee will be informed of the decision taken by the senior manager in writing within five working days of the Stage 2 formal meeting. The letter will cover:

- The capability issues
- Any decision that has been made and the reasons for that decision
- Notice that a final written improvement note will be placed on the employee's HR file for 12 months
- Any action plan with deadlines and SMART targets with dates of the review meeting
- The employee's right to appeal
- Notice that a failure to improve standards will involve the employee progressing to Stage 3 of this procedure and may result in dismissal.

In cases of more serious performance issues continuing and that have a serious effect on the Town Council's overall performance, the senior manager can recommend that the employee proceed to Stage 3 of this procedure.

APPEAL

Appeals can be lodged by the employee to the Town Clerk within ten working days of the decision taken in the formal meeting.

Appeal meetings will normally take place within 14 days of receipt of the employee's written notice of appeal. The employee has the right to be accompanied by their trade union representative, full-time union official or work colleague.

The appeal will be heard Staffing Appeals Committee. Decisions on appeals will be final and the employee will be informed in writing within five working days after the appeal date.

STAGE 3: REVIEW MEETING AND DISMISSAL

Following an agreed period of time, if improvements in the employee's performance have not taken place, the senior manager will invite the employee to attend a third formal review meeting.

Should the Stage 2 written improvement note still be live, the written confirmation of the meeting should make clear that one of the outcomes of the Stage 3 meeting is dismissal. It should also set out the employee's right to be accompanied by their trade union representative, full-time union official or work colleague.

The employee should take all reasonable steps to attend the meeting on the date / time stated in the employer's letter. However, the meeting will be rescheduled to another time if they or their companion are not available at the chosen time. In these cases the employee must propose another date within five working days of the original meeting date.

If the employee is unable to attend the meeting they must state the reason for not attending. Failure to attend without a good reason may result in a decision being taken in the employee's absence. Each case will be assessed on its own merits, but the prime objective is to minimise any delays in holding meetings.

In cases where capability issues are on ill-health grounds, where a employee refuses to co-operate in providing medical evidence or to undergo an independent medical examination, the employee will be told in writing that a decision will be taken on the basis of the information available.

After the meeting the senior manager will review all the evidence and decide what action to take or recommend.

The employee will be told whether they have reached the required standard of performance. If the standard is reached, then no further action will be taken and the employee will be informed of the outcome in writing.

If the standard of performance has continued to be unacceptable then the employee will be dismissed.

Additionally, in cases where the dismissal that is being considered is due to ill-health capability, then the Town Council may be able to offer the employee ill-health.

A decision to dismiss must be approved by the Town Clerk and another member of the Senior Management Team after a full review of the case.

Details of the dismissal, the notice period and date of termination and the right of appeal will be confirmed in writing to the employee.

APPEAL AGAINST THE DECISION TO DISMISS

The employee has ten working days to submit an appeal against dismissal stating the grounds on which it is made following receipt of the decision letter. The appeal should be in writing to the Town Clerk.

If an appeal is lodged the dismissal does not take effect until the appeal has been heard, but the employee can be suspended on full pay from the date of the decision letter.

Appeal meetings will normally take place within 14 days of receipt of the employee's written notice of appeal. The employee has the right to be accompanied by their trade union representative, full-time union official or work colleague.

The appeal will be heard by the Staffing Appeals Committee. Supplementary evidence from all parties can be included as part of the appeal and should be submitted with the written appeal. This evidence will be circulated to all parties prior to a decision being made.

Decisions on appeals will be final and the employee will be informed in writing within five working days after the appeal date and (if applicable) the date in which their employment will end.

FURTHER INFORMATION

ACAS code of practice on disciplinary and grievance procedures

www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures

ACAS guide to discipline and grievance at work (including Appendix 4: Dealing with absence)

www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work

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APPENDIX A: Outline of Formal Capability Procedure

