



BODMIN TOWN COUNCIL

CAPABILITY PROCEDURE

1.1 Introduction

This procedure should be used primarily for supporting, enhancing and improving the performance of employees. In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out a framework for resolving issues relating to poor performance.

The procedure aims to ensure that:

- Where a lack of capability is identified in an employee, appropriate steps are taken to enable the employee (where possible) to satisfactorily carry out the duties and responsibilities they were appointed to undertake; and
- Consistent and fair treatment is given to employees who are unable to achieve the required standards.

1.2 Scope

The Capability Procedure must be followed where problems arise which call into question whether an employee is capable of performing the duties which they were appointed to undertake, assessed by reference to skill, aptitude, health or any other physical or mental characteristic.

Where there are issues of misconduct or of negligence these should be dealt with under the Disciplinary Procedure. In addition for matters of sickness, disability or ill health the Council's Sickness and Absence Policy should be used.

1.3 General Principles

This procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their manager.

The employee must be given at least 5 working days notice of the requirement to attend a formal review meeting or interview, and the employee has the right to be represented at these meetings.

In the event of a formal warning or a dismissal the employee has the right of appeal against decisions taken in accordance with this procedure. Appeals against formal warnings must be made by the employee in writing within ten working days of the confirmation of the decision and submitted to the Town Clerk, or in the case of absence, his deputy.

1.4 Related Procedures

When using the procedure it may be necessary to refer to the contents of other agreed policy documents such as: -

- Equal Opportunities Policy;
- Grievance Procedure;
- Sickness and Absence Policy; and
- Disciplinary Procedure

1.5 Right to be Accompanied

Employees have the right to be accompanied at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative, lay representative or work colleague, and the representative can take an active part in review meetings.

1.6 Action against a Trade Union Official

In normal circumstances no action will be taken against an officer of a recognised Trade Union until the matter has been discussed with a full-time officer of that union.

2 Probationary Employees

2.1 Many employees are appointed subject to the satisfactory completion of a probationary period (usually six months).

Probationary periods are an extension of the recruitment process in that they provide a further opportunity for managers to assess the employee's suitability for undertaking the duties and responsibilities of the post to which they are appointed. It is therefore essential that when taking on new staff the following points should be noted:

- Sufficient attention should be paid to recruitment and selection decisions - careful recruitment and selection should reduce the risk of poor performance;
- Each employee must have a clear job description which accurately reflects the nature of the post to ensure that they understand it;
- New employees must be aware of the standards of work that are required (these should be realistic and measurable in terms of quality, quantity and time), the consequences of failing to meet them and any conditions attached to the probationary period; and
- Employees should have the opportunity of regularly meeting with their line manager either formally or informally to discuss how they are getting on.

2.2 It is recommended that in addition to spending some time with the employee on the date they take up the post outlining what is required of them, further discussions should take place regularly thereafter at least at the end of the first week, the first and third month and finally at the end of the fifth month, when the employee should be informed whether or not they have satisfactorily completed their probationary period.

Where a lack of capability is identified in a probationary employee, this should be dealt with in accordance with the Capability Procedure and with due regard to the time constraints.

3 The Informal Procedure

3.1 In the first instance, the line manager should deal with minor issues of poor performance. A meeting with the employee should be arranged to discuss poor performance and the manager should raise any problems or areas for concern. Appropriate support and training should be offered to assist the individual in meeting the required standards in the future.

Realistic targets should be agreed with the individual and future expectations made clear by the manager. The manager should record the points discussed in the meeting and confirm this in writing, along with the agreed plan to achieve acceptable levels of performance.

- 3.2 A review meeting within 3 months should be arranged to assess whether targets have been met and whether performance is satisfactory.

In most cases these meetings should provide sufficient guidance, support and clarification of standards to rectify the situation.

However, the formal procedure will apply when: -

- Previous informal advice or guidance has proved ineffective; and/or
- The performance is so poor that informal discussions are unlikely to help.

At this stage, managers must consult with the Chairman of Finance, Staffing and Performance Management before invoking the formal procedure.

4 The Formal Procedure

- 4.1 If informal discussions have proved unsuccessful in raising performance levels to the standards required then the formal procedure will be invoked. There are three stages to the formal procedure and the employee will have the right of representation at each stage. During each stage the employee's performance will be monitored closely and following each review meeting the employee will be clear of how this will be carried out.
- 4.2 If at any stage during the above procedure the employee's performance improves to the extent that their capability is no longer in question they shall be informed of this and the employees file shall be marked accordingly.

5 Stage 1: The Capability Review

- 5.1 The Capability Review should build on the informal discussions and the primary objective should be to help and encourage the employee improve their performance to the required standard. The review should make clear to the employee what it is about their performance that is unsatisfactory and how they can improve to the required standard. The employee's line manager will carry out the Review.
- 5.2 The review has 4 main purposes: -
- i) To allow the Manager or Responsible Officer to discuss with the employee:
 - The standards of work required;
 - What improvement is necessary;
 - What can be done to help the employee achieve the required standards; and
 - How improvement will be assessed and a reasonable timescale in which to achieve it.
 - ii) To allow the employee to:
 - Obtain a clear understanding of what is expected of them;
 - Give an explanation or comment on their work; and
 - Provide their views or suggestions on how best the problem can be tackled.
 - iii) To allow the Manager or Responsible Officer and the employee to explore other options such as:
 - Additional instruction, training or personal development activity; and/or
 - Referral to occupational health.
 - iv) To make clear to the employee:

- The timescale for improvement;
- How and by whom their work will be monitored through the review period; and
- The consequences if their work does not improve or if improvement is not maintained.

5.3 Standards of performance should be agreed between the Line Manager or Responsible Officer and employee. However, in the absence of such an agreement, the manager must be satisfied that any targets set are reasonable and non-discriminatory. In cases where training has already been provided, its effectiveness should be reviewed and any further training or support should be agreed.

5.4 Following the review, if the Manager is satisfied that there is a shortfall in performance, the employee should be issued with a formal warning and an action plan and a time in which to achieve it. It should also be made clear that failure to achieve the action plan will lead to the next stage of the formal procedure.

The length of time given to improve will depend on the nature of the job and the performance gap, but in normal circumstances it should not be more than 3 months. The manager should confirm the outcome of the meeting in writing to the individual within 5 working days.

6 Stage 2 – The Capability Review

6.1 If the employee fails to achieve the standards and/or the timescales set out in the action plan then Stage 2 of the procedure is invoked which will be conducted by the Line Manager. This involves a further review, based on the same structure as that for Stage 1.

6.2 If it is concluded that there is still a performance issue to be addressed a further formal warning should be issued and action plan providing the following details:

- The improvement in performance required and any action to be taken by management to help the employee to achieve this;
- The period over which it is expected to take place (determined by the line manager according to the circumstances of the case). A period of between 6-12 weeks is generally considered reasonable, with interim reviews arranged at regular intervals during this period;
- That their performance will be monitored and the situation reviewed at the expiry of the assessment period; and
- The likely consequences of a failure to achieve the required level of improvement.

6.3 The employee should be reminded that if the action plan is not achieved, then Stage 3 of the procedure will be invoked. It needs to be made clear that Stage 3 may result in a decision to dismiss the employee. Again, the length of time given to improve will depend on the nature of the job and the performance gap, but in normal circumstances should not be more than 3 months.

A letter to confirm the outcome of the meeting should be sent to the employee within 5 working days.

7 Stage 3 – The Final Capability Review

7.1 The Chairman of Finance, Staffing and Performance Management will chair the Final Capability

Review and the Line Manager who conducted stages 1 and 2 should also be present to provide details of the previous review meetings and of the steps taken to encourage improvement in the employee's performance.

The employee will have the opportunity to respond and put forward any points they wish to be considered.

7.2 Consideration should be given to any alternatives to dismissal such as redeployment and/or options of downgrading, however this may not always be possible and each case will be assessed on its own merits.

7.3 The Chair must be satisfied that they have heard all the relevant information and that the employee has been given sufficient opportunity to improve. If they consider that the employee's performance remains unsatisfactory they must inform the employee that their employment is terminated on the grounds of capability or any alternatives to dismissal.

The employee's dismissal will be with notice or, if serving their notice period is not in the interest of the Council, they will receive pay in lieu of notice. The dismissal must be confirmed in writing within 5 working days, stating the reasons for it and informing the employee of their right of appeal.

8 Levels of Authority

8.1 Guidance is given here on the appropriate levels of authority although alternative arrangements may have to be made on occasion.

Formal	Officer	Authority
Stage 1 & 2	Line Manager or Responsible Officer	Formal warnings
Stage 3	Town Clerk or Chairman of the Finance, Staffing & Performance Management Committee	Dismissal

9 The Right of Appeal

9.1 In the event of a formal warning or dismissal the employee has the right of appeal to the Mayor. The Appeal must be made in writing within 10 days of the date of the letter confirming dismissal.

9.2 The Mayor or designated deputy and two members of the Council who have not been involved in the formal review meetings should conduct the appeal hearing where possible.

9.3 The appeal will take place as soon as is practically possible. The Appeal Panel will consider the details of the poor performance presented by the Chair of the Final Capability Review and will consider the comments of the employee.

9.4 Employees have the right to be accompanied at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative, lay representative or work colleague, and the representative can take an active part in review meetings.

The decision of any appeal hearing is final.

10 Training

10.1 Appropriate training (as available) will be given to any Managers or Members who might be

involved in capability or appeals meetings to ensure they fulfil their responsibilities under this procedure.

11 **Review**

- 11.1 This strategy will be reviewed regularly (not less than annually) and amended as necessary based on good practice or evidence taken forward.

12 **Alternative Formats**

- 12.1 Disability Discrimination Act 1995 – copies of this document in large print (A3 Format) or larger font size, or recorded onto tape as a ‘talking book’ can be made available for those with sight impairment on request from the Council Office or by telephoning 01208 74159 or e-mailing paul.ocallaghan@bodmin.gov.uk
- 12.2 The Council can also arrange to provide versions in other languages for staff whose first language is not English.

13 **Freedom of Information**

- 13.1 In accordance with the Freedom of Information Act 2000, this Document will be posted on the Council's Website www.bodmin.gov.uk and copies of this document will be available for inspection on deposit in the Council Office.