

CAPABILITY PROCEDURE

(This Policy was reviewed by the full Council at its AGM held on 14 May 2025, minute 20/25-26)

1. Purpose and Scope.

- 1.1 This procedure is designed to help and encourage all employees of Swanscombe and Greenhithe Town Council to achieve and maintain acceptable standards of performance and attendance. The procedure applies to all employees; the aim is to ensure consistent and fair treatment for all. The Staff Disciplinary Procedures deals with concerns about misconduct.
- 1.2 The procedure has been drawn up in accordance with the ACAS Code on Disciplinary and Grievance Procedures.
- 1.3 For issues of attendance, this procedure should also be read in conjunction with the Staff Disciplinary Procedures.

2. Principles.

- 2.1 The procedure deals with situations where an employee's health no longer makes it possible for them to carry out their work to the required standard, and/or where an employee is unable to maintain a satisfactory level of work performance, but this is not a matter of misconduct.
- 2.2 The procedure is primarily to help and encourage employees to improve unsatisfactory attendance and performance, rather than merely to impose sanctions. It will be consistently applied. Any issues will be dealt with as thoroughly and promptly as possible and written records will be made and kept confidentially.
- 2.3 The Town Clerk will provide help and support where possible before resorting to formal action. No employee shall be dismissed without prior warning that their performance or attendance is unacceptable and being given the opportunity to improve.
- 2.4 The employee will have the right to be accompanied by a work colleague or trade union representative at all formal stages of the procedure.
- 2.5 If the employee or accompanying person cannot attend a formal meeting, another meeting will be arranged, to take place within 5 working days of the original date. This timescale can be extended with mutual agreement.
- 2.6 The employee will receive a written explanation of any action taken. If this is a warning, the employee will also receive an explanation of what improvement is expected, within what timescale, and when and how their performance/attendance will be reviewed.
- 2.7 If an employee has difficulty reading, or if English is not their first language, the Town Clerk will explain the content of any written correspondence to them orally.
- 2.8 All elements of the procedure will take in to account any disabilities of the employee. The Council will not illegally discriminate on the grounds of gender, race, disability, age, sexual orientation, religion or belief.

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2.9 Employees have the right to appeal against any penalty imposed under the formal stages of this procedure.

3. Powers to Take Action under the Capability Procedure.

3.1 Action under this procedure may be taken by the Town Clerk:

- Written Warning – may be given by the Town Clerk, subject to a right of appeal (as per the Staff Disciplinary Procedure).
- Final Written Warning - may be given by the Town Clerk, subject to a right of appeal (as per the Staff Disciplinary Procedure).
- Dismissal - may be given by the Town Clerk, subject to a right of appeal (as per the Staff Disciplinary Procedure).

4. The Procedure.

4.1 Informal Counselling

4.1.1 The day to day supervision of employees is outside the scope of this procedure. It is the responsibility of all Senior Employees to monitor their staff and ensure that employees understand what is expected of them with regard to both work standards and attendance.

4.1.2 When the Town Clerk is concerned about an employee's performance, he should meet with them to talk about the problem and discuss what needs to be done about it. The first stage in dealing with poor job performance is to determine whether the matter is one of capability or misconduct. Incapability is where the employee is not doing their job in the way the employer requires. The employer should then investigate whether that is due to any lack of application on the part of the employee (in which case Staff Disciplinary Procedures could be contemplated) or whether it is due to the employee's lack of ability in one or more of the tasks required. If the employer considers it to be due to any lack of ability, the employee must be informed of:-

- a) How their work does not measure up;
- b) The standards expected of the employee;
- c) A timescale to improve at the end of which the employer will assess the employee;
- d) Any support, training or advice available to the employee.

4.1.3 Further support (including but not limited to training) should be considered if appropriate. To achieve the improvement needed, the Town Clerk may sometimes have to speak to or counsel a member of staff more than once about the same problem.

4.1.4 Issues of absence due to sickness or impairment will be dealt with through informal counselling before the formal stages of this procedure are initiated.

4.1.5 If informal counselling does not bring about an improvement in performance or attendance, the matter will be dealt with under the formal stages of this procedure.

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4.2 Formal Stage One.

4.2.1 This stage applies where an improvement has not been achieved through informal counselling. The Town Clerk will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable. The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague. At the meeting, the Town Clerk will discuss their concerns with the employee and agree performance or attendance standards with the member of staff and a time period over which improvement will be expected. They will also agree how the individual's performance will be monitored and when review(s) will take place. The Town Clerk will warn the employee that a failure to improve within the required timescale could result in a final written warning and ultimately, dismissal. The employee will be advised of their right of appeal. This information will be confirmed in writing to the employee as soon as is reasonably practicable after the meeting.

4.2.2 A first written warning under this procedure will remain 'live' for six months, although this may be extended in appropriate circumstances (e.g. where a period of training is required which will not be completed within six months). If the employee's performance improves adequately within this period, then the process will terminate at this stage. A copy of the letter will be kept on the employee's personal file but it will be disregarded for the purposes of this procedure once the warning is no longer live.

4.2.3 If performance or attendance remains unsatisfactory, then Stage 2 of this procedure will be invoked by the Town Clerk.

4.3 Formal Stage Two.

4.3.1 This stage applies where performance or attendance does not improve within the required timeframe after a first written warning, or where performance or attendance levels have worsened before the end of the review period. The Town Clerk will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable. The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague. At the meeting, the manager will discuss their concerns with the employee and agree performance or attendance standards with the member of staff and a time period over which improvement will be expected. They will also agree how the individual's performance will be monitored and when review(s) will take place. The Town Clerk will warn the employee that a failure to improve within the required timescale could result in dismissal. The employee will also be advised of their right of appeal. This information will be confirmed in writing to the employee as soon as is reasonably practicable after the meeting.

4.3.2 A final written warning under this procedure will remain 'live' for twelve months, although this may be extended in appropriate circumstances. If the employee's performance improves adequately within this period, then the process will terminate at this stage. A copy of the letter will be kept on the employee's personal file but it will be disregarded for the purposes of this procedure once the warning is no longer live.

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4.3.3 If performance or attendance remains unsatisfactory, then Stage 3 of this procedure will be invoked by the Town Clerk.

4.4 Formal Stage Three.

4.4.1 This stage applies where performance or attendance still fails to improve after a final written warning, or where performance or attendance levels have worsened before the end of the review period. The Town Clerk will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable. The letter will invite the employee to a meeting to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague. If the Town Clerk is not satisfied that the employee's level of performance or attendance will improve within a reasonable timeframe, the employee will be dismissed with notice or pay in lieu. Alternatively, redeployment to an alternative post may be considered, at the discretion of the Council, if any suitable posts are available.

4.4.2 The employee will be informed in writing, as soon as possible, of the reasons for dismissal, the date on which their employment will terminate and of their right to appeal.

5. Appeals.

5.1 If an employee wishes to appeal against formal action taken against them under this procedure, they must write to the Town Clerk who conducted the disciplinary meeting, with reason(s) for the appeal, within 5 working days of being notified of the formal outcome of the meeting.

5.2 The employee will be invited to an appeal meeting which will be arranged as soon as is reasonably practical. They will be informed of their right to be accompanied by a work colleague or trade union representative at the appeal meeting.

5.3 The appropriate Senior Employee (Town Clerk or Responsible Financial Officer) hearing the appeal can withdraw the penalty imposed and/or impose a lesser one, but cannot increase the penalty.

5.4 At the appeal meeting, the appropriate hearing manager (Town Clerk or Responsible Financial Officer) will consider the information presented at the original meeting, together with any new evidence presented, and will allow the employee to comment on this. The outcome of the appeal will be confirmed in writing to the employee within 5 working days of the appeal hearing.

6. Monitoring and Review.

6.1 The Town Clerk is responsible for the effective implementation of this policy and for ensuring it is regularly reviewed.