



Eton Town Council Capability Policy

The purpose of a Capability Procedure is to set out a clear structured approach to improving an employees' performance. It is staged like the disciplinary procedure and can lead to disciplinary warnings being issued up to and including termination of employment. The capability procedure should ONLY be used to address issues of poor performance and not issues of misconduct which are dealt with under the disciplinary procedure.

In what follows, the term line manager should be taken as synonymous with The Mayor.

When an employee is performing below the minimum expected standard in their role, their line manager should address the issue with the employee at the earliest opportunity and work with the employee to bring their performance up to an acceptable standard.

If at each stage the employer follows a robust and structured approach to performance management and the employee then fails to reach the required standards, disciplinary warnings may be issued which could, ultimately, lead to a capability dismissal.

Wherever possible, issues of performance should be addressed as soon as possible in a one to one environment between the line manager and their employee. Even informally, the line manager should keep notes of the discussions and provide a summary of them to their employee.

All capability/performance management discussions should include:

- Identification of performance standards not being met – supported by evidence i.e. missed deadlines, poor accuracy, customer feedback etc
- What the acceptable performance standards are
- In what timeframe the improvement is expected
- Any support the employee might need i.e. mentoring, further training, reasonable adjustments etc
- Next scheduled review – this should include enough time for the employee to get to the required standard (usually one month depending on circumstances)

Stage One – Informal discussion

Where an employee may have been performing at a less than optimal level, the line manager should try to address the issue informally. This would take the form of an informal chat and does not have a disciplinary outcome.

It is best practice that the line manager shares notes of the meeting and the expectations of the employee in a record of the meeting. This could be meeting minutes or an email. A copy of which should be included in the employee's personnel file.

Stage Two – First formal capability meeting

If the employee's performance has not improved following the informal discussion and any agreed interventions i.e. additional training/mentoring, different ways of working etc. the line manager should invite the employee to a capability meeting. The employee has a right to be accompanied by a colleague or trade union representative.

The invitation should set out the date and time of the meeting, the right to be accompanied and the reason for the meeting. A minimum of two working days' notice of the meeting is a minimum best practice standard.

The meeting should be held somewhere discreet and without interruption.

During the meeting, the line manager should take notes and a summary of these should be provided to the employee within two working days of the meeting taking place and a copy placed on the employee's file.

At the meeting the line manager should summarise the previous informal discussions and the improvements agreed. They should then outline further evidence of unacceptable performance and the need for this meeting.

The employee can then comment on the issues and any mitigating circumstances for not hitting the required standards of performance.

If all necessary support has been given and the employee does not present any mitigating evidence then a first capability warning can be issued. This will formally set out points of discussion in this meeting, the improvements in performance that are required, the timeframe in which these improvements must be made and how long the warning will be valid for – usually six months.

The process for appeals against any warnings issued must be outlined to the employee.

Stage Three – Second formal capability meeting

If the employee has a first capability warning on file and continues to underperform then a second capability meeting should be held. Usually, a minimum period of one month should be given for the employee to work on and improve their performance.

Again, the line manager must outline further evidence of unacceptable performance and allow the employee a right to reply in mitigation. The employee has the right to be accompanied by a colleague or trade union representative at the meeting.

Unless issues are raised by the employee that directly affect their ability to carry out work to the acceptable standard and the employer has given all the required support, a second written warning for capability can be issued. This would be valid for one year.

The process for appeals against any warnings issued must be outlined to the employee.

Stage Four – third stage capability meeting

If the employee continues to underperform despite previous attempts to coach them to achieve the desired level, then a third capability meeting should be scheduled in the same way as previous stages i.e. minimum two working days' notice, right to be accompanied etc

At this meeting the line manager must outline evidence of underperformance and discuss with the employee why they are not achieving the standards required. If there is no mitigating defence set out by the employee then the line manager may issue a final written warning for capability. The line manager must make the employee aware that further unacceptable performance can lead to dismissal.

The warning letter must set out the evidence of underperformance, what improvements are expected and in what time frame (usually a minimum of one month).

The process for appeals against any warnings issued must be outlined to the employee.

Final stage – capability dismissal:

If, after informal and formal capability discussions have been exhausted and performance standards have still not been adequately and consistently improved, the employer has the right to terminate the employee.

A final capability meeting must be arranged with the employee and their trade union representative or colleague (if desired).

At this meeting, the line manager must set out further evidence of underperformance and the steps taken to date to support the employee in getting to the desired performance standards. They should discuss with the employee why their performance is still less than optimum and listen to any supporting statements from them.

If, having given the employee all the time and support required and having undertaken a structured approach to managing their performance the employee has still not reached the required standards, the employer can now terminate the employee (as long as they have the authority to dismiss or have gained approval for the dismissal) on the grounds of capability.

Appeals

An employee who wishes to appeal against a disciplinary decision must do so within five working days in writing to the Mayor or his Deputy stating the ground(s) on which the disciplinary penalty should be reviewed. In such case the Mayor will appoint an Appeals Panel

constituted of three councillors appointed by the Mayor for that particular purpose and it will sit as a committee according to the Council's Standing Orders. Members of the Appeals Panel will hear all appeals and their decision is final. At the appeal any disciplinary penalty imposed will be reviewed.

The appeals hearing will be normally held within 10 working days of receipt of the letter. The decision of the Appeals Panel shall be final.

Appeals hearing

At the appeals hearing, the employee will be given opportunity to state the ground(s) on which the appeal is made. The Disciplinary Panel who took the original decision will then have the opportunity to explain their decision to impose the given penalty. The members of the Appeals Panel conducting the appeal may exercise discretion as to whether or not the two parties will be present together during the proceedings. The hearing will be adjourned when all the evidence has been heard. The members of the Appeals Panel conducting the appeal will consider the merits of the appeal, in private, before reaching a decision.

The members of the Appeals Panel will, whenever possible, verbally inform the employee of the decision reached and confirm this in writing no later than five working days after the hearing.

The members of the Appeals Panel has the authority to quash or reduce a disciplinary penalty or, in exceptional and appropriate circumstances, to increase it, in accordance with the penalties specified in the Council's disciplinary procedure.

An appeal hearing is intended to focus on specific factors that the employee feels have received insufficient consideration, such as:

- an inconsistent/inappropriately harsh penalty
- extenuating circumstances
- bias of the disciplining manager
- unfairness of the hearing
- new evidence subsequently coming to light.

Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

Dismissal:

The dismissal date should be agreed with the employee. It is for the employer and employee to agree the manner in which the employee exits the organisation i.e. immediately or working through a notice period, handover of any current workloads etc.