

SPENNYMOOR TOWN COUNCIL



CAPABILITY POLICY AND PROCEDURE

Author of Policy:	Town Clerk
Date Effective From:	24 th May 2022
Policy Review: When & By Whom	12 th May 2022 Constitution Working Group
Next Review:	September 2024
Version Control	V4

In accordance with the Freedom of Information Act 2000, this document will be posted on the Council's Website www.spennymoor-tc.gov.uk and copies of this document will be available for inspection on deposit in the Council Offices, Town Hall, Spennymoor. Costs are as per the publication scheme.

Contents

Capability Policy	3
Objectives	3
Key Principles	3
Responsibilities	5
Managers	5
Employees	6
Trade Union Representatives	6

1. Capability Policy

Spennymoor Town Council seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career.

2. Objectives

The objectives of this policy are to:

- Improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on developing a series of performance improvement plans, which are mutually agreed (wherever practicable) to reach the required standards;
- Ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues;
- Ensure that the Town Council is a fair employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to any employee;
- Support managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees;
- Contribute towards the improvement of the performance and effectiveness of the Town Council;
- Help protect the Town Council, its employees and service users from the consequences of poor work performance.

3. Key Principles

This policy and procedure ensures that the Town Council has fair and effective arrangements for dealing with work performance and capability matters.

Before employees can be expected to reach appropriate standards of job performance, the Council accepts they should be provided with appropriate training, guidance and support.

A work performance issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner due to capability, (would but can't) or as a result of misconduct (can but won't). In cases of misconduct the Disciplinary Policy and Procedure should be used.

In exceptional cases where a performance error or defect has serious consequences (i.e. if it results in the serious jeopardy of the health and safety of service users or other employees) the principles/procedure for gross misconduct as outlined in the Disciplinary Policy and Procedure should be followed.

Initial identification of an employee's failure to meet the required levels of performance often arises through normal performance management meetings i.e. one-to-ones, supervisions, appraisals. It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case, the manager should invite the employee to attend an Informal Capability Meeting. The discussion should alert the employee to the concerns and give the line manager the opportunity to assess the situation, on the basis of the information provided.

During this informal stage, the manager will provide the necessary advice, coaching, guidance and support in addition to developing with the employee (and agree where practicable) a series of Performance Improvement Plans in order to support the individual in attaining the required standards.

Progress made by the employee against the Performance Improvement Plan will be reviewed on a regular basis. The outcome of these reviews will determine whether it is necessary to progress to the formal stage of the process i.e. Stage 1 – Formal Capability Meeting and Stage 2 – Formal Capability Hearing.

Where improvements in performance prove to be of a temporary nature following application of the formal stages of the Capability Procedure, the manager, in conjunction with an independent HR Adviser, has the option to return immediately to Stage 1 of the Formal Procedure, if the performance concerns are related.

Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.

As per the Green Book - Employees Pay and Conditions Policy, the manager, in conjunction with the Town Clerk, has the discretion to withhold a pay increment as part of any formal action taken against the employee. Any increments withheld may subsequently be paid if the employee's performance becomes satisfactory.

Employees have the right to appeal against any formal sanction given.

4. Responsibilities

4.1 Managers

- Ensuring employees are aware of Council rules, practices and procedures and for applying the policy in a fair and consistent manner.
- Developing a culture where employees are supported and assisted in achieving the required standards of performance.
- Through normal performance management meetings i.e. one-to-ones, supervisions, appraisals etc., address and resolve work performance issues informally and promptly as appropriate.
- To record details of all meetings within the procedure with the employee including any targets, monitoring and support.
- To keep a copy of the notes of meetings, letters to the employee and any ad hoc verbal feedback given during the monitoring period and place in the employee's "supervision" file where this process is used. If individual "supervision" files are not used, it should be placed in a designated confidential and secure location within the Town Clerk's office.
- If the matter progresses to a Stage 2 – Formal Capability Hearing, to present the details of employee's failure to meet required standards, including all relevant performance statistics and the outcome of performance improvement plans to date.

4.2 Employees:

- Employees have a contractual responsibility to perform at a satisfactory level and are, therefore, expected to be committed to achieving such levels of performance.
- Employees are expected to attend any meetings and hearings convened in accordance with the Capability Policy and Procedure.

4.3 Trade Union Representatives:

The same standards will apply to Trade Union Representatives as to all other employees. However, where application of formal action is being considered against a Trade Union Official or Representative, the case must first be discussed with a Senior Trade Union Representative or full time Official. This is to avoid the action being misconstrued as an attack on the union itself or on its representation and negotiating role, and is in accordance with the ACAS Code of Practice.

CAPABILITY PROCESS – INFORMAL STAGE	
Informal Actions	<p>Initial identification of an employee's failure to meet the required levels of performance, often arises, through normal performance management meetings i.e. one-to-ones, supervisions, appraisals.</p> <p>It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already. If this is the case the manager should invite the employee to attend an Informal Capability Meeting.</p>
Informal Capability Meeting.	<p>Preparation before the meeting: Manager invites employee to the meeting to discuss the performance concerns that have been identified.</p> <p>NB. Please note there is not a template invite letter for this as it is an informal meeting.</p> <p>Manager collates any necessary information, where appropriate, to demonstrate to the employee where they are not meeting the required standards of performance, e.g. job description/person specification, competencies, supervision notes, appraisals, case files, screen prints of data systems, call recordings etc.</p>
During the Meeting:	<p>The discussion should include the following:</p> <ul style="list-style-type: none"> • The manager will present the evidence of the performance issue(s) to the employee and express his/her concerns being sensitive at all times to the fact that unless otherwise identified, issues of performance are not disciplinary in nature, and that the correct approach is therefore one of constructive support, guidance, coaching and encouragement • The employee will be given a full opportunity to respond and explain any factors affecting his/her current performance levels. If any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health • The manager will give thorough consideration to all the responses made by the employee • The manager should make the employee aware of the confidential Employee Support and Counselling Service.
	<p>If as a result of the discussion it is decided that:</p> <ol style="list-style-type: none"> 1. it is not necessary to take further action under the Capability Procedure the manager and employee can agree any actions and review as appropriate. 2. it is necessary to refer the employee to Occupational Health the Informal Capability Meeting should be adjourned whilst medical advice is sought.

	<p>NB: where an employee declines a referral to Occupational Health, the Manager needs to explain that without such a report management decisions will be made using the information available to them and that the matter will continue to be managed under the Capability Policy and Procedure.</p>
	<p>3. if it is necessary to take further action under the Capability Procedure, the manager should:</p> <ul style="list-style-type: none"> • Confirm with the employee that their work performance will continue be monitored under the Informal stage of the Capability Policy and Procedure and they should be given a copy of this document • Develop a Performance Improvement Plan (PIP) with the employee, with specific targets and dates. Every effort should be made where possible to agree the details of the plan. Reference should be made to the job description and other relevant performance criteria. • Advise how they will assist the employee to meet the required levels of improvement • Establish the time period within which the specified improvement(s) will be monitored and feedback given on progress, and where applicable to amend the development plan. The time period (as a general rule) will be between 1 and 3 months. However, each case will need to be considered on its own merits and as such it maybe that a shorter or longer monitoring period is required and advice should be sought from the independent HR Advisor. • Advise of the frequency of review meetings to monitor progress (at least two).
	<p>Follow up Action: If the need for further action is identified the outcome of the Informal Capability Meeting will be confirmed in writing to the employee (Template Letter 1), including details of the Performance Improvement Plan.</p> <p>Review meetings should take place during the agreed monitoring period to monitor progress, which should be documented in the 'Progress' column of the Performance Improvement Plan. Both the manager and employee should provide input to this. Any targets that need amending should also be made on the Performance Improvement Plan. Furthermore, regular feedback may also be given to the employee during the review period, this may be done verbally (at ad hoc meetings, one to ones, supervisions etc) but a written record should be kept.</p> <p>As a minimum the date(s) for the first review meeting and last review meeting at the end of the monitoring period should be set and included in the letter.</p>

	<p>Possible Outcomes of End of Review Period:</p> <p>At the end of the agreed monitoring period the manager will meet with the employee to discuss the progress and inform them of the outcome of the review period. The manager should then confirm the outcome to the employee in writing:</p> <ul style="list-style-type: none"> • Where performance has reached the required standards an agreement to maintain the standard of performance should be made including how this will be measured (Template Letter 2). • If the performance level remains unsatisfactory; the employee should be invited to a Stage 1 – Formal Capability Meeting (Template Letter 3).
<p>CAPABILITY PROCESS – FORMAL STAGES</p>	
<p>Stage 1 – Formal Capability Meeting</p>	<p>The Stage 1 – Formal Capability Meeting should be held with the employee’s Manager and Senior Manager as appropriate. Managers should seek advice from the independent HR advisor before progressing with this stage</p>
	<p>Preparation before the Meeting:</p> <p>Manager invites employee to the Stage 1 – Formal Capability Meeting to discuss the continuing concerns, giving at least 5 working days’ notice (Template Letter 3).</p> <p>The employee should be provided with a copy of the Informal Stage - Performance Improvement Plan and the notes of subsequent review meetings.</p> <p>The employee is advised that they have the right to be accompanied by a Town Council work colleague or recognised Trade Union Representative/recognised Trade Union Officer.</p> <p>Any documentation that the employee/representative wishes to submit should be provided no later than 3 working days before the meeting. This will avoid delays at the meeting.</p> <p>NB. The independent HR Advisor will also be in attendance to provide support to the Chair of the meeting i.e. Senior Manager.</p>
	<p>During the Meeting:</p> <p>The discussion should include the following:</p> <ul style="list-style-type: none"> • A review of the monitoring period and support given the shortfall in performance • Agreement (where practicable) of the Performance Improvement Plan and further targets • Any further training and support that is required and can be provided • Consideration of any extenuating circumstances that may be

	<p>affecting the employee's performance</p> <ul style="list-style-type: none"> • Consideration of withholding an increment until level of performance has reached the required standards • Establishment of a further monitoring period (between 1 and 3 months). However, each case will need to be considered on its own merits and as such it maybe that a shorter or longer monitoring period is required and advice should be sought from your HR Adviser in all cases • Review meetings (at least two) • The employee should be forewarned that the level of performance is not acceptable and that failure to improve by the end of the review period may result in progressing to Stage 2 – Formal Capability Hearing of the procedure, which could lead to dismissal on the grounds of capability • Consideration of alternative employment. Where a suitable vacancy exists the normal recruitment and selection process will apply.
	<p>Follow up Action:</p> <p>The outcome of the Stage 1 – Formal Capability Meeting will be confirmed in writing to the employee including the possible outcome if performance continues not to be acceptable (Template Letter 4). A copy of the Performance Improvement Plan will also need to be enclosed with the letter.</p> <p>Review meetings should take place between the employee and their Manager during the agreed period to monitor progress, which should be documented in the 'Progress' column of the Performance Improvement Plan. Any targets that need amending during this period should also be made on the Performance Improvement Plan. Furthermore, regular feedback may also be given to the employee during the review period, this may be done verbally (ad hoc meetings, one to ones, supervisions etc) but a written record should be kept.</p> <p>As a minimum the date for the first review meeting and final review meeting at the end of the monitoring period should be set and included in the letter.</p> <p>If the Manager, in conjunction with the independent HR Advisor, have decided to withhold an increment until level of performance has reached the required standards, the Manager will need to email to advise of this.</p>
	<p>Possible Outcomes of Review Period:</p> <p>At the end of the agreed monitoring period the Senior Manager and employee's Manager will meet with the individual to discuss the progress and inform them of the outcome of the review period.</p>

	<p>The Senior Manager should then confirm the outcome to the employee in writing.</p> <p>Where the employee has now reached, or is shortly expected to reach, the specified levels of performance, advise no further formal action is necessary. However, the decision will remain 'live' for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature then the manager has the option of returning immediately to this point in the procedure (Template Letter 5), if the performance concerns are related.</p> <p>Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.</p> <p>Any increments withheld may subsequently be paid if the employee's performance becomes satisfactory, the Manager will need to consider this in conjunction with the independent HR Advisor before emailing to advise of this, or</p> <ul style="list-style-type: none"> • The employee has made substantial improvements, but his/her performance is still below acceptable standards. A further review period of between 1 to 3 months will therefore be required (Template Letter 6), or • The employee has made little or no improvement, and has shown few signs that he/she will be capable of meeting the required standard. In such circumstances, a Stage 2 – Formal Capability Hearing will be arranged (Template Letter 7).
<p>Stage 2 – Formal Capability Hearing</p>	<p>Following notification from the manager, the independent HR Advisor will convene the Stage 2 - Capability Hearing and confirm the arrangements in writing to the employee (with copies to Panel Members and Representative (if appropriate)), giving at least 10 working days' notice (Template Letter 8). This notice will include:</p> <ul style="list-style-type: none"> • A clear statement of the employee's failure to meet the required standards of performance and the Performance Improvement Plan • Record of monitoring/progress to date (including a copy of all correspondence from the Informal stage and Stage 1 – Formal Capability Meeting including Performance Improvement Plan, notes of subsequent review meetings, advice from Occupational Health (if appropriate) • The date, time, location of the hearing • Names of the panel members • The name of the person who will present the management position

	<ul style="list-style-type: none"> • Whether the manager intends on calling any witnesses • The employee's entitlement to call witnesses • The employee's right to be accompanied by a Town Council work colleague or a recognised Trade Union Officer or recognised Trade Union Representative • A decision may be taken to dismiss on the grounds of capability • The right of appeal against formal sanctions i.e. dismissal on the grounds of capability and/or withholding the pay increment.
	<p>Preparation before the Hearing: Any documentation from the employee should be submitted 5 working days prior to the hearing including advance notification to the HR Adviser of the number of witnesses (if any) that they plan to call.</p> <p>The additional information will be distributed to all parties by the independent HR Advisor 3 working days prior to the Hearing.</p> <p>If the employee wishes to attend the hearing but is absent due to sickness or some other reason or their representative is unable to attend, the meeting may be postponed and will be rearranged within 5 working days or as soon as is practicable. The employee should be notified of the date in writing and informed that if they are not able to attend on the revised date the hearing will proceed on this occasion in their absence. If the employee cannot attend personally they will be invited to put their case either through their representative or if that person is not available, an alternative representative, or submit their case in writing in advance by no later than 3 working days in advance of reconvened hearing. (Template Letter 9).</p>
	<p>During the Hearing:</p> <p>Hearing Procedure The Hearing Panel will consist of the following two officers, who should not have played any previous part in any aspect of the case:</p> <p>Chairperson The Town Clerk, who has the authority to implement all of the possible outcomes of the Hearing. Or a Special Committee in those circumstances where the Town Clerk is by virtue of interest or pre-disposition unable to act.</p> <p>A Second (Independent) Manager Another senior manager.</p> <p>An Independent HR Advisor A HR Advisor's prime role will be to contribute specialist knowledge of procedural issues, relevant policies and employment law matters. They will participate fully in the hearing and any discussions about the case, but will not be a party to the final decision.</p>

	<p>A Note Taker As dismissal is a possible outcome of a Stage 2 – Formal Capability Hearing, the note taker will be provided by the Chair of the Panel.</p> <p>Management Position This will normally be presented by the employee’s manager/Senior Manager and will be required to demonstrate what action, support, training, and discussions have taken place with the employee throughout the Informal stage and Formal Stage 1 of the procedure.</p> <p>Employee/Employee Representative The employee/employee representative will be required to give an explanation as to why they have not met the required standards of performance.</p> <p>The Decision All three panel members discuss the employee's performance history, all related evidence and any relevant Town Council policies, procedures and practices. The Chairperson and Independent Manager make the final decision on the outcome.</p> <p>Immediately after the Hearing, the Chairperson (assisted by the independent HR Advisor) will prepare a detailed Record of the Outcome.</p>
	<p>Outcomes of Hearing:</p> <p>No further action. However, the decision will remain ‘live’ for 12 months and therefore if satisfactory improvement proves only to be of a temporary nature then the manager has the option, of returning immediately to the Formal Stage 1 of the procedure, (Template Letter 10), if the performance concerns are related. Under normal circumstances, where a new area of performance concern has been identified the process should commence at the Informal Capability Meeting.</p> <p>Extension of previous monitoring period (1 to 3 months). However, each case will need to be considered on its own merits and as such it maybe that a shorter or longer monitoring period is required and advice should be sought from the independent HR Advisor in all cases. Should the employee not have made satisfactory progress at the end of this period, the Capability Hearing will be reconvened with the same panel following the same procedure (Template Letter 11).</p> <p>Dismissal with contractual notice. In exceptional circumstances, the employee will not be required to attend work during their notice period.</p>

	<p>Follow up Action: The outcome of the Stage 2 – Formal Capability Hearing should be confirmed to the employee in writing by the Chair of the Capability Hearing.</p> <p>Where an employee is dismissed on the grounds of capability:</p> <ul style="list-style-type: none"> • The letter should include their right of appeal • The manager should complete a Leavers Form (Template Letter 12)
<p>Stage 3 – Appeal</p>	<p>An employee has the right to submit an appeal against formal sanctions i.e. dismissal on the grounds of capability and/or withholding the pay increment.</p> <p>If the employee wishes to appeal they must do so in writing, outlining the reasons for this, within 10 working days of the date on which the decision is confirmed in writing.</p> <p>The appeal will be heard by Members of the Appeals Committee. A minimum of any 3 Members may act as a panel.</p> <p>The purpose of an appeal is to enable the Appeals Committee to consider all of the circumstances of the case and the procedure followed. The appellant will have an opportunity to present his/her basis for appealing and the managers concerned will outline the reasons for their action. A decision can then be taken as to whether the outcome was appropriate and justified in light of all the issues involved.</p> <p>Appendix 1 outlines the Appeals Procedure</p>

Procedure for Appeals

Procedure to be Followed at A Local Hearing of Appeals

- 1 The Council's Appeals Committee shall be the body which hears and determines relevant appeals arising out of the Council's disciplinary procedures. The Committee's decision shall be final insofar as the Council's internal processes are concerned.
 - (i) All appeals must be made by in writing, to the Town Clerk, outlining the reasons for this, within 10 working days of the date on which the decision is confirmed in writing.
 - (ii) The Appeals Committee shall have jurisdiction to deal with appeals on one or more of the following grounds only:
 - that the employee was not guilty of the conduct alleged against him/her;
 - that the disciplinary action by way of formal action was unreasonable in the circumstances;
 - that the manner in which the employee was treated was procedurally unfair.
 - (iii) Evidence relating to any aspect of the employee's employment other than, that which relates solely to the above-mentioned grounds shall be inadmissible during the hearing before the Appeals Committee.
 - (iv) The Appeals Committee shall not accept jurisdiction to determine appeals relating to the following:-
 - legal points or interpretation;
 - matters relating to the propriety of established procedural rules previously agreed with the relevant Union;
 - any grievances or other disciplinary actions other than those currently appearing on the personnel record of the employee.

2. The employee shall be given notice in writing at least 14 days in advance of the time and place of the hearing and shall be allowed to be represented by his trade union representative or some other person(s) of his/her choice and subject to paragraph 3 shall be entitled to call witnesses and produce documents relevant to his case at the hearing.
3. Each party shall not less than seven days before the date fixed for the hearing, disclose to the other the written statements of witnesses intended to be called at the hearing: no person shall give evidence at the hearing unless that person's written statement has been so disclosed.
4. The Local Authority's representative shall put the case in the presence of the appellant and his/her representative and may call witnesses.
5. The appellant (or his/her representative(s)) shall have the opportunity to ask questions of the Council's representative(s) on the evidence called by him/her and any witnesses whom he/she may call.
6. Members of the Appeals Committee may ask questions of the Council's representative and witnesses.
7. The appellant (or his/her representative(s)) shall put his/her case in the presence of the Council's representative and to call such witnesses as he/she wishes.
8. The Council's representative(s) shall have the opportunity to ask questions of the appellant and his/her witnesses.
9. Members of the Appeals Committee may ask questions of the appellant and his/her witnesses.
10. The Council's representative(s) and the appellant (or his/her representative(s)) shall have an opportunity to sum up their case if they so wish. The appellant shall have the right of final reply.
11. The Council's representative(s) and the appellant and his/her representative(s) and witnesses shall withdraw.
12. The Appeals Committee, with the officer appointed as its Secretary, shall deliberate in private, only recalling the Council's representative(s) and the appellant and his/her representative(s) to clear points of uncertainty on evidence given. If recall is necessary, both parties are to return, notwithstanding only one is concerned with the point giving rise to doubt.
13. The Appeals Committee shall, wherever possible, announce its decision to the parties personally. If, for whatever reason, this is not possible, the Chair of the Appeals Committee will write to all parties within 5 working days of the conclusion of the hearing. In any event the result of the Appeals Committee will be followed up in writing. (Template Letter 13).