

SILLOTH-ON-SOLWAY TOWN COUNCIL
CAPABILITY POLICY

1. **POLICY STATEMENT**

- 1.1 The Council believes that its success is dependent upon the performance and wellbeing of its employees.
- 1.2 The aim of this policy is to provide a framework within which the Council can work with employees to maintain satisfactory standards of work performance and to encourage and support improvement where necessary. The aim is to ensure consistent and fair treatment for all.

2. **PRINCIPLES**

- 2.1 It is the Council's policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond at an informal meeting before any formal action is taken.
- 2.2 In serious cases of gross negligence, the Disciplinary Policy will be used and dismissal without previous warnings may be an appropriate sanction.
- 2.3 This procedure does not form part of an employee's Contract of Employment, and it may be amended at any time. The Council may also vary any parts of this procedure, including any time limits, as appropriate in a particular case.
- 2.4 The policy has been developed to comply with legal requirements and in accordance with ACAS guidance and best practice principles.
- 2.5 The Council reserves the right to seek HR advice from a third party if required.

3. **WHO IS COVERED BY THE POLICY?**

- 3.1 This procedure applies to all employees. employed contractors. It does not apply to agency workers or self-employed contractors.
- 3.2 The Council retains discretion in respect of the capability procedures to take account of an employee's length of service and to vary the procedures accordingly. An employee who has not yet completed their probationary period may not be in receipt of any warnings before dismissal but will retain the right to an informal meeting and will have the right to appeal.

4. WHAT IS COVERED BY THE POLICY

- 4.1 This policy is used to deal with poor performance. It does not apply to cases involving genuine sickness, proposed redundancies or misconduct. In those cases, reference should be made to the appropriate policy or procedure.
- 4.2 The Council recognises that during an employee's period of employment their capability to carry out duties may deteriorate. This can be for a number of reasons, the most common one being that either the job changes over a period of time and an employee fails to keep pace with the changes, or an employee changes (most commonly due to health reasons) and can no longer cope with the work.

5. JOB CHANGES/GENERAL CAPABILITY ISSUES

- 5.1 If the nature of an employee's job changes or if the Council has general concerns about an employee's ability to perform their job it will try to ensure that the employee understands the level of performance expected and that they receive adequate training and supervision.

6. PERSONAL CIRCUMSTANCES/HEALTH ISSUES

- 6.1 Personal circumstances may arise which do not prevent an employee from attending work, but which prevent the employee from carrying out their normal duties (eg. a lack of dexterity or general ill health). If such a situation arises, Council will normally need to have details of the employee's medical diagnosis and prognosis so that it has the benefit of expert advice. Under normal circumstances this can be most easily obtained by asking the employee's own doctor for a medical report. The employee's permission is needed before Council can obtain such a report and it will expect the employee to co-operate in this matter should the need arise. When the Council has obtained as much information as possible regarding the employee's condition and, after consultation with the employee, a decision will be made about the employee's future employment in their current role or, where circumstances permit, in a more suitable role.
- 6.2 There may also be personal circumstances which prevent an employee from attending work, either for a prolonged period(s) or for frequent short absences. Under these circumstances the Council will need to know when it can expect the employee's attendance record to reach an acceptable level. This may again mean asking the employee's doctor for a medical report or by making whatever investigations are appropriate in the circumstances. When the Council has obtained as much information as possible regarding the employee's condition, and after consultation with the employee, a decision will be made about the employee's future employment in their

current role or, where circumstances permit, in a more suitable role.

- 6.3 The Council will take into consideration whether poor performance may be related to disability and, if so, whether there are reasonable adjustments that can be made to an employee's working arrangements, including changing their duties or providing additional equipment or training.

7. CONFIDENTIALITY

- 7.1 The Council's aim is to deal with performance matters sensitively and with due respect for the privacy of any individual involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 7.2 The employee, and anyone accompanying the employee (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 7.3 The employee will normally be told the names of any witnesses whose evidence is relevant to the capability hearing, unless the Council believes a witness's identity should remain confidential.

8. THE PROCEDURE – INFORMAL DISCUSSIONS

- 8.1 In the first instance, performance issues should normally be dealt with informally between the employee and the employee's manager and the Chairman of the Staffing Committee or two members of the Staffing Committee. Informal discussions may be held with a view to:
- Clarifying the required standards;
 - Identifying the areas of concern;
 - Establishing the likely causes of poor performance and identifying any training needs;
 - Setting targets for improvement; and/or
 - Agreeing a timescale for review.
- 8.2 Where informal discussions have not resulted in a satisfactory performance improvement the Council will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing, gathering any relevant documents, monitoring the employee's work and, if appropriate, interviewing the employee and/or other

individuals confidentially regarding the employee's work.

9. NOTIFICATION OF A CAPABILITY HEARING

9.1 If the Council considers there are grounds for taking formal action over alleged poor performance, the employee will be required to attend a capability hearing. The Council will notify the employee in writing of its concerns over their performance, the reasons for those concerns, and the likely outcome if it decides after the hearing that the employee's performance has been unsatisfactory. It will also include the following where appropriate:

- A summary of relevant information gathered as part of any investigation;
- A copy of any relevant documents which will be used at the capability hearing; and
- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case Council will give the employee as much information as possible whilst maintaining confidentiality.

9.2 The Council will give the employee written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time to prepare their case based upon the information the employee has been given.

10. RIGHT TO BE ACCOMPANIED AT HEARINGS

10.1 The employee may bring a supporter to any capability hearing or appeal hearing under this procedure. The supporter may be either a trade union representative or a colleague. The employee must notify the manager conducting the hearing who the chosen supporter is, in good time before the hearing.

10.2 A supporter is allowed reasonable time off duties without loss of pay but no-one is obliged to act as a supporter if they do not wish to do so.

10.3 If the employee's choice of supporter is unreasonable the Council may require the employee to choose someone else, for example;

- If in the Council's opinion the employee's supporter may have a conflict of interest or may prejudice the hearing; or
- If the supporter is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

10.4 The Council may, at its discretion, allow you to bring a supporter who is not a colleague or union representative (for example, a family member) where this will help overcome a particular difficulty caused by a disability.

11 FORMAL PROCEDURE AT CAPABILITY HEARINGS

- 11.1 If an employee or their supporter cannot attend the hearing the employee should inform the Council immediately and it will usually arrange an alternative time. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If an employee fails to attend without good reason or is persistently unable to do so (for example, health reasons), the Council may have to take a decision based upon the available evidence.
- 11.2 The hearing will normally be held by two members of the Staffing committee. The employee's supporter may make representations, ask questions, and sum up the employee's case, but will not be allowed to answer questions on the employee's behalf. The employee may confer privately with their supporter at any time during the hearing.
- 11.3 The capability hearing will usually include:
- Setting out the required standards that Council believe the employee has failed to meet and going through any relevant evidence that has been gathered.
 - Allowing the employee to ask questions, present evidence, respond to evidence and make representations.
 - Establishing the likely causes of poor performance, including any reasons why any measures taken so far have not led to the required improvement.
 - Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
 - Where appropriate, discussing targets for improvement and a timescale for review.
 - If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.

The notes of the meeting will be recorded.

- 11.4 A hearing may be adjourned if the Council needs to gather any further information or give consideration to matters discussed at the hearing. The employee will be given reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 11.5 The Council will inform the employee in writing of its decision and the reasons for it, usually within fourteen days of the capability hearing. Where possible the Council will also explain this information to the employee in person.

12 STAGE 1 CAPABILITY HEARING: FIRST WRITTEN WARNING

12.1 Following a Stage 1 capability hearing, if it is decided that an employee's performance is unsatisfactory, Council will issue a first written warning, setting out:

- The areas in which the employee has not met the required performance standards. Targets for improvements.
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- A period for review.
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

12.2 The warning will normally remain active for six months from the end of the review period, after which time it will be disregarded for the purpose of the capability procedure.

12.3 After the active period, the warning will remain permanently on an employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.

12.4 An employee's performance will be monitored during the review period and the employee will be informed of the outcome in writing as follows:

- If the Town Clerk is satisfied with an employee's performance, no further action will be taken;
- If the Town Clerk is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
- If the Town Clerk feels that there has been some but insufficient improvement, the review period may be extended.

13. STAGE 2 CAPABILITY HEARING: FINAL WRITTEN WARNING

13.1 If an employee's performance does not improve within the review period set out in the first written warning, or if there is further evidence of poor performance while the first written warning is still active, the Council may decide to hold a Stage 2 capability hearing. It will send out written notification as set out in paragraph 9.

13.2 Following a Stage 2 capability hearing, if it is decided that an employee's performance is unsatisfactory, the Council will issue a final written warning, setting out:

- The areas in which the employee has not met the required performance standards. Targets for improvement.
- Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- A period for review.

- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

13.3 A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on the employee's personnel file but will be disregarded in deciding the outcome of future capability proceedings.

13.2 An employee's performance will be monitored during the review period and the employee will be informed of the outcome in writing as follows:

13.4 An employee's performance will be monitored during the review period and the employee will be informed of the outcome in writing as follows:

- If the Town Clerk is satisfied with an employee's performance, no further action will be taken;
- If the Town Clerk is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
- If the Town Clerk feels that there has been some but insufficient improvement, the review period may be extended.

14. STAGE 3 CAPABILITY HEARING: DISMISSAL

14.1 The Council may decide to hold a Stage 3 capability hearing if it has reason to believe:

- An employee's performance has not improved sufficiently within the review period set out in the final written warning.
- An employee's performance is unsatisfactory while a final written warning is still active.
- An employee's performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

It will send out written notification as set out in paragraph 9.

14.2 Following the hearing, if it is decided that an employee's performance is unsatisfactory, the Council may consider the following option

- Dismissing an employee
- Extending an active final written warning and setting a further review period (in exceptional cases where it is believed a substantial improvement is likely within the review period).

- 14.3 Dismissal will normally be with full notice or payment in lieu of notice, unless an employee's performance has been so negligent as to amount to gross misconduct, in which case an employee may be dismissed without notice or any pay in lieu.

15 APPEALS AGAINST ACTION FOR POOR PERFORMANCE

- 15.1 If an employee feels that a decision about poor performance under this procedure is wrong or unjust the employee should appeal in writing, stating their full grounds of appeal, to the Town Council Chairman within one week of the date on which they were informed in writing of the decision.
- 15.2 If an employee appeals against dismissal, the date on which the dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful an employee will be reinstated with no loss of continuity or pay.
- 15.3 If an employee raises any new matters in an appeal, Council may need to carry out further investigation. If any new information comes to light the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing.
- 15.4 The employee will be given written notice of the date, time and place of the appeal hearing. This will normally be up to five working days after the written notice is received.
- 15.5 The appeal hearing may be a complete rehearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at Council's discretion depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 15.6 Where possible, the appeal hearing will be conducted by a Councillor of the Town Council who has not previously been involved in the case.
- 15.7 A hearing may be adjourned if the Council needs to gather any further information or give consideration to matters discussed at the hearing. An employee will be given reasonable opportunity to consider any new information obtained before the hearing is reconvened.

15.8 Following the appeal the Council may:

- Confirm the original decision;
- Revoke the original decision;
- or Substitute a different penalty.

15.9 The Council will inform an employee in writing of its final decision as soon as possible, usually within one week of the appeal hearing. Where possible it will also explain this to the employee in person. There will be no further right of appeal.