

# YEOVIL TOWN COUNCIL



## CAPABILITY PROCEDURE

### 1. Purpose and Scope

This procedure deals with Capability which, as defined by the Employment Rights Act 1996 refers to the skill, aptitude, health or any other physical or mental quality of the individual. It is distinguishable from misconduct, which would be dealt with under the Council's Disciplinary Procedure.

This procedure applies to all employees at Yeovil Town Council. It is designed to ensure that concerns regarding the capability of an employee to perform the duties and responsibilities of their post are handled with fairness and consistency.

The procedure will be applied in the following circumstances:

- a) when the Council's normal performance management processes have not resulted in job performance being improved to the required standard
- b) in cases where an employee cannot undertake their role due to some form of statutory ban or failure to acquire a qualification which is essential for that role
- c) in cases of repeated short-term absence due to ill-health and application of the Absence Policy and procedure has not resulted in a sufficient improvement in attendance.
- d) in cases of long-term sickness absence, the Absence Policy will be the primary focus, but where all parties agree to a conclusion that the prospects for a return to work are slight, the Capability Procedure will be adopted

In relation to ill-health, this Procedure should only be invoked once the provisions of the Absence Policy have been followed and particular care will be taken when the absence is due to work-related stress and/or the direct result of alleged or actual harassment.

Managers should always be alert to a possible underlying issue or problem, which could explain a dip in performance, apparent inefficiency or unacceptable attitude. Action to address any matters identified as causing or contributing to the poor performance or prolonged absence should be taken, where possible, before invoking this Procedure.

### 2. Invoking the Capability Procedure

#### 2.1 Capability relating to skill or aptitude

The Council's performance management processes should ensure that job standards, goals/targets are clear and understood by both managers and their staff.

Job performance will be the subject of monitoring and review through informal discussion and formal joint review (appraisal). Where shortfalls are evident, these should be dealt with through such performance management discussions and appraisal, which may result in further clarification of standards and goals/targets and in training, coaching, other performance improvement actions and subsequent interim reviews.

This Capability Procedure should only be invoked as a last resort when Performance Management processes have failed to produce a performance of the required standard.

## **2.2 Capability related to ill health**

Similarly the Council's Absence Policy and Procedure will aim to address cases of ill-health absence, be they a series of sickness/injury-related absence (from single or multiple causes) or long-term absence due to sickness or injury. That procedure may result in the consideration of medical evidence and advice from Occupational Health, as well as review meetings between managers and staff. They may also result in adjustments to working conditions, methods and the working environment in order to accommodate a return to work.

Therefore health-related capability is primarily to be handled constructively through the Absence Policy and Procedure, including the requirement to make reasonable adjustments to working terms and conditions and to working methods in the case of those classifiable as disabled under the Equality Act 2010.

In some cases an inability to continue working due to ill-health will lead to early retirement on ill-health grounds and there will be no need to invoke this Procedure. In others, however, this option will not be possible and dismissal on the grounds of ill health is a possibility. In such cases, the Council is obliged to follow the statutory dismissal procedures, which this Procedure reflects.

In long-term illness cases, normally the Capability Procedure will only be invoked when an employee's entitlement to sick pay has, or is soon to be, exhausted and, in the case of disabled employees all avenues to make reasonable adjustments (including the possibility of redeployment and flexible working) have been pursued.

## **2.3 Statutory Ban**

In rare instances, employees may be subject to a legal restriction that means they cannot undertake the duties of their job. The most obvious instance is a driving ban where driving is an essential part of the duties.

There may also be instances where new or existing Regulations stipulate that a particular qualification is required in order to undertake a particular role and an employee is unable to acquire that qualification in the requisite and/or reasonable timescale.

In both these cases full discussions will take place with the employee to consider: whether the role can be effectively undertaken in spite of the ban, or without the requisite qualification, by making appropriate and reasonable adjustments to working methods or through a reasonable reallocation of duties within work teams. It should also be considered whether there is another role, which the employee can undertake without the ban or lack of qualification having an impact.

This might be on a permanent basis or temporarily for the duration of the ban or while the employee seeks to obtain the qualification.

Where these options are not reasonably practicable then the Council will have to consider dismissal and this Capability Procedure will be invoked.

### **3. The Procedure**

In any formal meetings held under this Procedure, employees have the right to be accompanied by a trade union officer or a work colleague. Similarly, managers chairing meetings (including appeal meetings) must be accompanied.

The Procedure has three stages:

#### ***Stage One - Notification***

The Town Clerk will set out in writing the nature of the issue faced, together with a summary of the discussions and actions taken to date to address the issue. In this letter the employee will be invited to a meeting to review the matter, at which they will have the right to be accompanied by a work colleague or trade union officer.

The venue and timing for the meeting will be determined with all due consideration and sympathy to the employee's health where ill-health capability is the matter for consideration. In all cases reasonable notice will be given to allow the employee time to organise accompaniment and to prepare.

#### ***Stage Two - Meeting***

This will be one more opportunity to fully consider the circumstances and for the employee to offer further response and evidence.

After due consideration, Town Clerk will decide on what action, if any, to take. This may include:

- a) further action and/or support to help resolve the issue, or
- b) further action/support, combined with a final warning that dismissal may result if there is no resolution within laid down timescales. In such cases, should there be no improvement, and dismissal is contemplated, the three stages of the Procedure will be followed again
- c) dismissal with notice – for a first meeting under the Capability Procedure, this outcome is only likely in the cases of long-term ill-health (i.e. after all

reasonable steps under the Absence Policy Procedure have been exhausted) or a statutory ban (after all reasonable alternative options have been considered)

If there is a decision to dismiss for incapability, alternative employment options (to positions more suited to the individual's capability) will be considered and, if available, may be offered as an alternative to dismissal. Such options should already have been considered fully in respect of employees whose performance has been adversely affected by ill-health, injury or disability.

The meeting outcome will always be confirmed in writing. In the case of outcomes b) and c), the letter will confirm the right to appeal the decision and in the case of a) details of actions and support agreed with the employee.

### ***Stage 3 - Appeal***

Where applicable an appeal should be lodged within a reasonable time and usually within five working days of receiving the written decision.

An appeal will be heard at a meeting, at which the individual has the right to be accompanied by a work colleague or a trade union officer, by the Town Clerk and three elected Council Members selected from the Policy, Resources and Finance Committee. In this instance the appeal meeting will always represent a full re-hearing of the case.

The decision on appeal is final, unless exceptionally the manager hearing the appeal substitutes dismissal for a final warning, in which case there will be a further right of appeal as above. Employees are to be advised that they must exercise their right of appeal if they wish to subsequently pursue a claim to an Employment Tribunal.

## **4. Records**

Where warnings are issued, they will be kept on file with the meeting documents and letters and will be retained on file for the period specified on the warning. This period would normally be:

- 12 months for an improvement notice and warning.
- 24 months for a final written warning.

If consideration is given to possible further sanctions, any warnings, which are 'spent', will not be considered and, in any event, more recent warnings will carry greater weight than those more than twelve months old. Once the period is 'spent' the warnings will be removed from the personal file.

Even when a warning is 'spent' and documents removed from the personal file, in order that the Council can meet any possible obligations under the TUPE

regulations, all documentation in relation to Capability proceedings will be retained for a total of two years before being destroyed. In such cases, the records will be securely stored and kept separate from any personal file that may be available to managers generally. Information relating to 'spent' warnings will not be made available to those involved in selection decisions.

Yeovil Town Council

24<sup>th</sup> July 2018

To be reviewed: July 2023

(subject to changes in legislation, recommended practice, operations)