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Capability Procedure

Introduction

This procedure is used to support, enhance, and improve the performance of employees. This procedure sets out a framework for resolving issues relating to poor performance, in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures. The procedure aims to ensure that consistent and fair treatment is given to all individuals.

Scope

Where there are issues of misconduct or of negligence, these will be dealt with under the Disciplinary Procedure. For matters of sickness, disability, or ill health, the Absence Management Policy will be used.

General Principles

The Procedure is not a substitute for good management practices. It should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their line manager.

The employee must be given at least 5 workings days' notice of the requirement to attend a formal review meeting or an appeal.

The employee has the right to be represented at formal review meetings or appeals.

In the event of a formal warning or a dismissal, the employee has the right of appeal.

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Minute Number: GR16/02/10.2

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Related Procedures

When using the procedure, it may be necessary to refer to the contents of other agreed documents such as:

- Equality and Diversity Policy
- The Grievance Procedure
- The Absence Management Policy
- Other conditions set out in the Staff Handbook

Representation

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative, or a work colleague.

Representatives can take an active part in review meetings.

Action against a Trade Union Official

In normal circumstances no action will be taken against an officer of a recognised Trade Union until the matter has been discussed with a full-time officer of that union.

The Informal Procedure

The employees line manager will deal with minor issues of poor performance in the first instance – the Clerk for employees and the Chair and another Member of the Staffing Committee for the Clerk.

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A meeting with the employee to discuss poor performance should be arranged and any problems or areas for concern should be raised by the line manager. Appropriate support and training should be offered to assist the individual towards meeting the required standards in the future. Realistic targets should be agreed with the individual and future expectations made clear by the line manager. The line manager or an appointed note taker will record the points discussed in the meeting and confirm this in writing to the employee along with the agreed plan to achieve acceptable levels of performance. A review meeting should be arranged within 2 months to assess whether the targets have been met and whether the performance is satisfactory.

In most cases, these meetings should provide sufficient guidance, support, and clarification of standards to rectify the situation.

However, the formal procedure will apply when:

- Previous informal advice or guidance has proved ineffective; or
- The performance is so poor that informal discussions are unlikely to help.

The Formal Review

If informal discussions have proved unsuccessful in raising performance levels to the standards set by the line manager, then the formal procedure will be invoked. There are three stages to the formal procedure. The employee has the right of representation at each stage.

During each stage, the employee's performance will be monitored closely. The method of doing this will be made clear to them at the conclusion of each review meeting.

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Stage 1: The Capability Review

The Capability Review should build on the informal discussions. It should be sufficiently specific so that the employee knows exactly what it is about their performance that is unsatisfactory and how they can improve to the required standard. The line manager will carry out the Review with a note taker present.

The review has four main purposes:

1. To allow the line manager to discuss with the employee: (i) the standards of work required; (ii) what improvement is necessary; (iii) how the employee can be helped to achieve them; and (iv) how improvement will be assessed and the timescale which must be reasonable.
2. To allow the employee to: (i) obtain a clear understanding of what is expected of them; (ii) give an explanation or comment on their work; and (iii) give their views on how the problem can best be tackled.
3. To allow the line manager and the employee to explore other options, such as: (i) additional instruction, training, or personal development activity; or referral to occupational health, which may involve alternative action under the Council's Absence Management Policy. Please refer to the Absence Management Policy.
4. To make clear to the employee: (i) the timescale for improvement; (ii) how and by whom their work will be monitored during the review period; and (iii) the consequences if their work does not improve or if improvement is not maintained.

Ideally, standards of performance should be agreed between the line manager and employee. However, in the absence of such an agreement, the line manager must satisfy themselves that any targets set are reasonable and non-discriminatory. If training has already been given, then its effectiveness should be reviewed, and any further training and support agreed.

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If the line manager is satisfied at the conclusion of the review that there is a shortfall in performance, the employee will be issued with a formal warning and an action plan, including timescales, to achieve the required performance. It will also be made clear that failure to achieve the action plan will lead to the next stage of the formal procedure. The length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances it should not be more than 3 months. The line manager should confirm the outcome of the meeting in writing to the individual within 5 working days.

Stage 2 – The Capability Review

If the employee fails to achieve the standards or the timescales set out in the action plan, then Stage 2 of the procedure is invoked. This involves a further review based on the same structure as Stage 1.

Stage 2 of the Capability Review will be conducted by the line manager. If it is concluded that there is still a performance issue to be addressed, a further formal warning should be issued along with an action plan giving details of the standards of performance required and the timescales within which these must be achieved. The employee should be reminded that if the action plan is not achieved, then Stage 3 will be invoked. It needs to be made clear that Stage 3 may result in a decision to dismiss the employee. Again, the length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances should not be more than 3 months. A letter to confirm the outcome of the meeting should be sent to the employee within 5 working days, it should also explain the employee's right to appeal against any warning issued.

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Stage 3 – The Final Capability Review

The Final Capability Review will be heard by three members of the Staffing Committee who have not previously been involved.

The line manager who conducted Stages 1 and 2 should also be present to provide details of the previous review meetings and of the steps taken to encourage improvement in the employee's performance.

The employee will have the opportunity to respond and put forward any points they wish to be considered.

Consideration should be given to any alternatives to dismissal, such as redeployment or options of downgrading. However, this may not always be possible and will depend on each individual situation and the circumstances of the organisation.

The Panel must satisfy themselves that they have heard all of the relevant information, and that the employee has been given sufficient opportunity to improve. If they consider that the employee's performance remains unsatisfactory, they must inform the employee that their employment is terminated on the grounds of capability or any alternatives to dismissal.

The employee's dismissal will be with notice or, if serving their notice period is not in the interests of the Council, they will receive pay in lieu of notice. The dismissal must be confirmed in writing within 5 working days, stating the reasons for it, and informing the employee of their right of appeal.

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Levels of Authority

Guidance is given here on the appropriate levels of authority, although alternative arrangements may have to be made on occasion.

Stage 1 & 2 – Clerk – Formal Warnings.

Stage 3 – Staffing Committee -Dismissal.

The Right of Appeal

In the event of a formal warning or dismissal, the employee has the right of appeal to the line manager. The Appeal must be made in writing within 10 days of the date of the letter confirming dismissal.

Three members of the Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter. They will be assisted by an independent adviser.

The appeal will take place as soon as is practicable. The Appeal Panel will consider the details of the poor performance presented by the Chair of the Final Capability Review and will consider the comments of the employee.

The decision of any appeal hearing is final.

Training

Appropriate training will be given to the Clerk or any Members who might be involved in capability or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

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Reviewed – for Office use only

Review Date: 08.02.17.

Reviewed By: Governance Review Committee.

Amendments: None.

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Review Date: 13.06.18.

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Amendments: None.

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Review Date: 22.03.23.

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Amendments: None.

Minute Number: GR23/03/16.2.

Review Date: 28.02.24.

Reviewed By: Governance Review Committee.

Amendments: Page 2 – The Informal Procedure – 1st paragraph – amend to read 'The employees line manager should deal with minor issues of poor performance in the first instance – the Clerk for employees and the Chair and another Member of the Staffing Committee for the Clerk).' Page 2 – The Informal Procedure – 2nd paragraph – change all references to 'Parish Clerk' to 'line manager'. Change all references to 'Parish Clerk' to 'line manager'. Page 3 – 3rd paragraph – 2nd sentence – amend to read 'However, in the absence of such an agreement, the line manager must satisfy themselves that…'. Page 3 – 4th paragraph – 1st sentence – amend to read 'If the line manager is satisfied at the conclusion of the review that there is a shortfall in performance, the employee will be issued with a formal warning and an action plan, including timescales, to achieve the required performance.'. Page 3 – 8.2 Stage 2 The Capability Review – 2nd paragraph – amend to read 'Stage 2 of the Capability Review will be conducted by the line manager.'. Page 4 – 8.3 Stage 3 The Final Capability Review – 1st sentence – amend to read 'The Final Capability Review will be heard by three members of the Staffing Committee who have not previously been involved.'. Page 4 – 8.5 The Right of Appeal – 1st paragraph – 1st sentence

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- amend to read 'In the event of a formal warning or dismissal, the employee has the right of appeal to the line manager'.

Minute Number: GR24/02/17.2.

Review Date: 26.03.25.

Reviewed By: Governance Review Committee.

Amendments: Page 1 – Related Procedures – 1st bullet point – amend to read 'Equality and Diversity Policy'. Page 2 – The Informal Procedure – 1st sentence – amend to read ' The employees line manager will …'/
Minute Number: GR25/03/16.2.

Review Date: 25.03.26.

Reviewed By: Governance Review Committee.

Amendments: None.

Minute Number: GR26/03/19.2.