

**WITHYHAM PARISH COUNCIL
CAPABILITY POLICY**

Responsibility: Staffing Committee
Review Cycle: 2 yearly, or earlier in the event of legislative changes

Date of Adoption/Renewal	Date for review
December 2022	December 2024

Introduction

1.1 The term capability refers to an employee's skills, ability, aptitude and knowledge in relation to the job they are employed to do.

1.2 The purpose of this procedure is to provide guidance to deal with concerns of poor performance which relate to the capability of an employee to perform the functions of their post to a satisfactory level.

1.3 This procedure seeks to:

- Promote high standards of performance and service provision;
- Assist employees to improve their performance;
- Provide a fair and consistent means of dealing with work performance which is below an acceptable level for the role in which the person is employed.

1.4 For employees who display a lack of capability during their probationary period, the Managing Employee Performance (Probationary) Policy should be used instead.

Relationship with Disciplinary Procedure

2.1 This procedure runs parallel with, but is not part of, the Disciplinary procedure. The council recognises that it would be inappropriate to apply the Disciplinary Procedure when poor performance relates to lack of capability.

2.2 Concerns regarding an employee's capability should be picked up by the Clerk predominately because of unsatisfactory job performance and output. Where an employee is underperforming, and the reasons are related to circumstances within

their control, the Clerk should use the Disciplinary procedure to address their concerns.

2.3 One of the key distinctions between capability and conduct is that lack of capability will usually be outside of the employee's direct control, while the same employee will have control of their conduct at work.

2.4 It can sometimes be difficult to establish whether an employee's poor performance is due to incapability or to lack of effort, motivation or negligence and in some cases there may be elements of both. If this is the case, the Clerk should work through this procedure, rather than starting disciplinary proceedings.

2.5 If an employee is found to be underperforming, it is the Clerk's responsibility to examine the circumstances regarding the unsatisfactory performance and address those initially through discussions with the employee. It is the responsibility of the employee to identify what further support they may need to address any shortfall in their performance; however this will be supported by the Clerk who can provide help and guidance.

2.6 Where an employee is struggling to meet work performance standards and requires support and encouragement, treating the issue as a capability concern can allow for a more positive outcome.

2.7 Where an employee is struggling to meet work performance standards or they are unable to fulfil their contractual obligations due to ill health, HR advice should be sought before proceeding with any action.

General information

3.1 It is important to recognise that failings related to capability are not always an employee's fault.

3.2 A lack of capability exists where, no matter how hard an employee tries, they are simply unable to perform the job to the standard required. It is the agreed standard that is relevant, and not the Clerk's opinion of an employee. Expectations and

standards should be clearly communicated to employees. The basic document for this is the job description and person specification which should be kept accurate and up to date. The Clerk should regularly review this document to ensure that it is an accurate reflection of the requirements of the job role.

3.3 The Clerk needs to consider other issues which may impact upon the performance, these include:

- Inadequate or insufficient training;
- Changes to a post as a result of service restructure;
- Poor systems of work;
- Inadequate physical working environment;
- Inadequate provision of equipment or tools;
- Inadequate support and supervision;
- Lack of understanding of the duties and role;
- Work overload;
- Unrealistic targets or deadlines;
- Poor work relationships;
- Physical or mental ill health;
- Personal issues.

3.4 It is the Clerk's responsibility to discuss any minor matters of concern with their employees on a day to day basis outside of the capability procedure. The Clerk should offer positive advice, assistance, and guidance to encourage employees to achieve and maintain acceptable standards of performance.

3.5 Whilst it is a Clerk's role to consider external influences on performance, it is for an employee to inform the Clerk about what is preventing them from carrying out their duties to the agreed standard. If the employee does not feel comfortable sharing information with the Clerk as for example it is of a very personal nature, they should ensure it is shared with an appropriate alternative person.

The Informal Capability Process

4.1 It is a question of judgement as to whether an employee's capability requires the use of the formal capability procedure, although the Clerk is encouraged to approach capability informally at first before moving to a formal approach.

4.2 As soon as either the Clerk or the employee identifies a concern, the issue should be discussed between the two parties. Both parties will have every opportunity to discuss the concern and make any comments and to record them. Most areas of concern can generally be dealt with through informal discussions and counselling.

4.3 The employee will then be invited to attend an informal meeting giving them a minimum of 48 hours advance notice. During this meeting, the Clerk will provide clear specific examples of under performance or poor attendance in order to explain the capability issue. It is important that this meeting is undertaken as positively as possible, in order to motivate the employee to improve performance/attendance.

4.4 The meeting should be a two way conversation and provide the opportunity for the employee to provide any reasons for the underperformance. Two way communication involves seeking out, listening to and responding to the views of employees whilst also giving the Clerk the opportunity to express their concerns.

4.5 If under performance is associated with health issues the employee may be required to attend an occupational health assessment as part of the procedure. If under performance is associated with underlying personal related issues the Clerk may signpost the employee to the confidential counselling service, where appropriate.

4.6 An action plan will be agreed between the Clerk and the employee so that they know exactly what is expected of them to achieve the required performance/attendance standard and what support and assistance the Clerk will provide. The action plan should include:

- Agreed timescales to review and monitor performance/attendance over a period of between one and three months depending on the requirement of the improvement.
- Review dates and monitoring of standards of performance/attendance in respect of agreed objectives and the requirements of the job.
- If appropriate training specifically directed to facilitate improvement.
- If appropriate review and agreed variance of workload/objectives.

4.7 It is anticipated that in the vast majority of cases, no further action, other than normal follow-up will be necessary. However if there is no improvement, then the formal capability procedure will be initiated. The employee should be made aware that if there is no improvement within the timescales that have been agreed then formal capability will be pursued.

4.8 The Clerk will provide regular and timely feedback to the employee concerned. The feedback should cover the performance on general job aspects as well as the specific areas that have been highlighted as requiring improvement. Such feedback should include negative as well as positive aspects of the employee's performance, as this will further reinforce their understanding of the required standards and demonstrate the Clerk's attention to the issue.

The Formal Capability Procedure

5.1 If there has been no resolution from the informal capability process then management should initiate the formal process. If the Clerk has not already informed Staff Committee by this point they should do so before initiating the formal capability process

5.2 The Clerk should make the employee aware that they have concerns about their capability to carry out their role. The Clerk should then set up a date for a formal meeting to discuss their concerns in greater detail, giving the employee five working days' notice and the opportunity to be represented at the meeting by a colleague.

5.3 A discussion point may include looking at redeployment opportunities within the council of a post at the same, or a lower grade

5.4 After the meeting the Clerk should review the information gathered and decide which of the following courses of action to take:

- No further action necessary and removal from the process.
- There are still issues of concern and it is necessary to carry on with the process and extend the period of time for review but no formal warning.
- Issue a formal warning. An action plan should be agreed and a second meeting scheduled.

5.5 A written account of the meeting and what was discussed, a follow up action plan and a date of review should be produced and provided to the employee.

Second meeting

5.6 The second meeting should be set up and held between six weeks to two months after the first meeting. Again, at least five working days' notice should be given to an employee and they should be offered the right to be represented. At this stage the employee's performance should be reviewed against the agreed action points from the previous meeting. Again, the Clerk will then decide whether sufficient improvement has been made.

5.7 If it is clear that the agreed targets or action points have been achieved then the employee will be removed from the process, alternatively if the agreed targets or action points have not been met then the Clerk issues a second formal warning.

Third meeting

5.8 The third meeting should be set up between six weeks to two months from the date of the second meeting. At this meeting the Clerk should discuss with the employee whether they feel sufficient improvements have been made and if not, move straight to consideration of dismissal. The Clerk should then promptly put together a brief report, outlining their concerns and showing what steps have been taken.

5.9 The report should be passed to Staff Committee.

5.10 If it is the Clerk's view that improvements have been made, and the employee is now performing at an acceptable level, then the process should be ended. This decision should be confirmed in writing.

Consideration of dismissal

5.11 When three meetings have been held, appropriate support identified and taken up by the employee (where applicable), but targets have still not been met, and the employee's performance has remained at a level that is unsatisfactory, the Staff Committee will then write to the employee to invite them to a formal meeting.

5.12. The Staff Committee will nominate who will be present at the meeting.

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5.13 The hearing should take place quickly after the third meeting being held. The letter must include a copy of the Clerk's report and must give the employee five working days' notice of the meeting. The employee is entitled to be represented at the meeting.

5.14 At the meeting the Clerk will be asked to present their report illustrating the areas of concern and the lack of improvement. Witnesses may be called if this will add to the information already gathered and the employee will be allowed to present their case. The Staff Committee representatives will adjourn to consider the information and will later notify the employee verbally of their decision which will then be confirmed in writing within two working days of the meeting being held.

5.15 The decisions that the Staff Committee may reach will reflect those within the Disciplinary Procedure.

5.16 In the event that the employee is dismissed with notice, then the Staff Committee and Clerk should assess whether it is appropriate to place the employee on a period of authorised paid leave. If the decision is to dismiss the employee they must be given the right of appeal against this decision

Appeal Process

6.1 An employee has the right to appeal the decision to issue any formal warning, or dismissal, made as a result of the Clerk following this procedure. Appeals after the First and Second meetings will normally be heard by members of Staff Committee.

6.2 Members of Staff Committee will hear any appeal against dismissal. The employee should submit their notification of appeal to the Clerk within ten working days of receipt of their letter. They should also clearly state the grounds for their appeal.

6.3 The procedure used will be that outlined in the Disciplinary procedure