



SAFFRON WALDEN TOWN COUNCIL

Capability Policy

Version	Adopted Policy Date	Minute Reference	Review Date
1	April 2019	F&E 538-19	2022
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Policy and Principles

- 1.1 The primary aim of this procedure is to provide a framework within which Managers can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.
- 1.2 It is our policy to ensure that concerns over performance are dealt with fairly and that steps are taken to establish the facts. Employees should be given:
 - (a) a written statement of the reasons for concern;
 - (b) a fair hearing and
 - (c) the right to an appeal hearing
- 1.3 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.

Disabilities

- 2.1 At each stage, consideration should be given to whether the unsatisfactory performance is related to a disability and if so, whether there are reasonable adjustments that could be made to the requirements of the job or other aspects of the working arrangements.
- 2.2 If you have difficulty at any stage of the procedure because of a disability, or wish to inform us of a medical condition you consider relevant, you should tell us.

Informal Discussions

- 3.1 In the first instance, performance issues should normally be dealt with informally between you and your Manager as part of day-to-day management. Informal discussions may be held with a view to (for example):
 - (a) clarifying the required standards;
 - (b) identifying areas of concern;
 - (c) establishing the likely causes of poor performance and identifying any training needs;
 - (d) setting targets for improvement; and / or
 - (e) agreeing a time-scale for review.

- 3.2 In some cases an informal verbal warning may be given if the Manager deems it appropriate. There is no right of appeal.
- 3.3 The formal procedure will be used for more serious cases, or in any case where informal discussions have not resulted in a satisfactory improvement.

Capability Hearings

- 4.1 A capability hearing will be held at each stage of the procedure.
- 4.2 Unless it is impractical to do so, we will give you at least 48 hours written notice of the date, time and place of the capability hearing.
- 4.3 We will inform you in writing of our concerns over your performance and the basis for those concerns. You will have a reasonable opportunity to consider this information before the hearing.
- 4.4 You must take all reasonable steps to attend the hearing. Failure to attend a hearing without good reason may be treated as misconduct. If you or your companion cannot attend at the time specified, you should inform us immediately and we will seek to agree an alternative time.
- 4.5 A hearing may be adjourned if we need to gather any further information, or give consideration to matters discussed at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 4.6 We will give you written confirmation of our decision, the reasons for it, and your right of appeal, within one week of a capability hearing (unless this time scale is not practicable), in which case we will confirm this information as soon as is practicable.

Right to be Accompanied at Hearings

- 5.1 You may bring a companion to any capability or appeal hearings under this procedure. The companion may be either a Trade Union Official or a work colleague. You must tell the Manager conducting the hearing who your chosen companion is, in good time before the hearing.
- 5.2 In some circumstances your choice of companion may not be allowed: for example, anyone who may have a conflict of interest, or whose presence may prejudice the hearing.
- 5.3 Your companion may make representations, ask questions and sum up your case, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

- 5.4 You may bring a companion to any capability or appeal hearings under this procedure. The companion may be either a Trade Union Official or a work colleague. You must tell the Manager conducting the hearing who your chosen companion is, in good time before the meeting. Employees are allowed reasonable time off from duties without loss of pay as a companion.

Stage 1: First Capability Hearing

- 6.1 Where performance is unsatisfactory and informal steps have either failed to resolve the situation or are not appropriate, a first capability hearing will be held. This will follow the procedure set out in paragraph 4 and paragraph 5.
- 6.2 The purposes of the first capability hearing include:
- (a) setting out the required standards that are considered not to have been met;
 - (b) establishing the likely causes of poor performance;
 - (c) allowing you the opportunity to explain the poor performance and ask any relevant questions;
 - (d) discussing measures, such as additional training or supervision, which may improve performance;
 - (e) setting targets for improvement; and
 - (f) setting a time-scale for review
- 6.3 Following the hearing, if we decide that it is appropriate to do so, we will give you a first written warning setting out:
- (a) the areas in which you have not met the required performance standards;
 - (b) targets for improvement;
 - (c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
 - (d) a time-scale for review;
 - (e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 6.4 The warning will normally remain active for six months, after which time it will normally be disregarded for the purposes of the capability procedure. A record of the warning will form a permanent part of your personnel record.

- 6.5 Your performance will be monitored and at the end of the review period we will write to inform you of the next step, as follows:
- (a) If your Manager is satisfied with your performance, no further action will be taken;
 - (b) if your Manager is not satisfied, the matter may be progressed to Stage 2; or
 - (c) if the Manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2: Second Capability Hearing

- 7.1 If your performance does not improve within the review period, or if there are further instances of poor performance while your first written warning is still active, we will hold a second capability hearing. This will follow the procedure set out in *paragraph 4* and *paragraph 5*.
- 7.2 The purposes of the second capability hearing include:
- (a) setting out the required standards that are considered not to have been met;
 - (b) establishing the likely causes of poor performance including any reasons why the measures taken so far have not led to the required improvement;
 - (c) allowing you the opportunity to explain the poor performance and ask any relevant questions;
 - (d) identifying further measures, such as additional training or supervision, which may improve performance;
 - (e) setting targets for improvement; and
 - (f) setting a time-scale for review.
- 7.3 Following the hearing, if we decide that it is appropriate to do so, we will give you a final written warning setting out:
- (a) the areas in which you have not met the required performance standards;
 - (b) targets for improvement;
 - (c) any measures, such as additional training or supervision, which will be taken with a view to improving performance;
 - (d) a further time-scale for review;

- (e) the consequences of failing to improve within the time-scale, or of further unsatisfactory performance.
- 7.4 A final written warning will normally remain active for 6 months, after which time it will be disregarded for the purposes of the capability procedure. A record of the warning will form a permanent part of your personnel record.
- 7.5 Your performance will be monitored and at the end of the review period we will write to inform you of the next step, as follows:
- (a) if your Manager is satisfied with your performance, no further action will be taken;
 - (b) if your Manager is not satisfied, the matter may be progressed to a stage 3 capability hearing; or
 - (c) if your Manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 3: Dismissal or Redeployment

- 8.1 If your performance does not improve within the further review period set out in the final written warning, or if there are further serious instances of poor performance while your final written warning is still active, we will hold a further capability hearing. This will follow the procedure set out in *paragraph 4* and *paragraph 5*.
- 8.2 The purposes of the stage 3 hearing include:
- (a) setting out the required standards that are considered not to have been met;
 - (b) identifying areas in which performance is still unsatisfactory;
 - (c) allowing you the opportunity to explain the poor performance and ask any relevant questions;
 - (d) establishing whether there are any further steps that could reasonably be taken to rectify the poor performance;
 - (e) establishing whether there is any reasonable likelihood of the required standard of performance being met within a reasonable time; and
 - (f) discussing whether there is any practical alternative to dismissal, such as re-deployment to any suitable job that is available at the same or lower grade.

- 8.3 In exceptional cases where we believe that there is a reasonable likelihood of the necessary improvement being made within a reasonable time, a further review period will be set, and the final written warning extended.
- 8.4 If performance remains unsatisfactory and there is to be no further review period, we may:
- (a) re-deploy you into another suitable job at the same or (if your contract permits) a lower grade; or
 - (b) dismiss you.
- 8.1 Dismissal will normally be with full notice or payment in lieu of notice, unless you are guilty of gross misconduct within the meaning of our disciplinary policy, in which case we may dismiss you without notice or any pay in lieu.

Appeals

- 9.1 You may appeal against the outcome of any stage of the formal capability procedure. If you wish to appeal you should do so in writing, stating your full grounds of appeal within one week of the date on which you were informed of the decision.
- 9.2 Unless it is not practicable, we will give you between two days and one week's written notice of the appeal hearing. In cases of dismissal, the appeal will be held as soon as possible.
- 9.3 Where practicable, the appeal hearing will be held by a Manager who is senior to the person who conducted the capability hearing. You may bring a companion with you to the appeal meeting.
- 9.4 If you raise any new matters in your appeal we may need to carry out further investigation. If any new information comes to light, we will provide you with details in writing. You will have a reasonable opportunity to consider this information before the hearing.
- 9.5 Depending on the grounds for your appeal, the appeal hearing may be a complete rehearing of the matter or a review of the original decision.
- 9.6 Following the appeal we may:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different outcome.

- 9.7 Our final decision will be confirmed to you in writing, if possible, within one week of the appeal hearing. There will be no further right of appeal.
- 9.8 The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss you will be revoked with no loss of continuity or pay.