

# BILDESTON PARISH COUNCIL

## CAPABILITY POLICY

Adopted by the Parish Council on 9<sup>th</sup> October, 2019

# **CAPABILITY POLICY**

## **1. POLICY STATEMENT**

Bildeston Parish Council aims to provide employees with the direction, development and support necessary to assure a productive and rewarding career. This policy and procedure ensures that Bildeston Parish Council has a framework for dealing with capability matters fairly, effectively, consistently and in a timely matter to ensure that no individual is discriminated against.

## **2. PURPOSE**

The purpose of the capability policy and procedure is to -

- Positively and constructively support employees to improve their performance through advice, guidance and support, when it is identified they are not performing to the required standard
- Ensure that all employees are treated in a fair, consistent, understanding and timely manner and in accordance with all relevant legal requirements
- Contribute towards the improvement of the performance and effectiveness of Bildeston Parish Council
- Support managers and councillors in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- Ensure the employee is aware of each stage of the procedure and the possible outcomes
- Ensure all customers/residents/service users receive services of the highest standard

Where an employee is capable of carrying out their work duties but won't (i.e. the performance issues are 'wilful'), the Disciplinary Policy and Procedure should be used.

## **3. SCOPE**

This policy applies to all Bildeston Parish Council employees.

Informal feedback on performance does not form part of this procedure as this should be given through 'normal performance management arrangements' e.g. one to one meetings, etc.

Feedback through normal performance management arrangements must include positive, proactive feedback on performance and constructive feedback when performance is not at the required standard – this must include confirmation of the required standard, the standard the employee is currently performing at, an agreement of how the required standard will be achieved and the consequences if standards are not achieved. Every effort should be made to resolve performance issues on an informal basis.

## **4. RESPONSIBILITIES**

### **4.2 Responsibilities of Bildeston Parish Council**

Bildeston Parish Council is responsible for ensuring that employees are provided with the appropriate training, guidance and support to undertake their roles.

Employees will be supported in their efforts to improve and maintain the standard of work through advice, coaching and guidance.

This policy and procedure will apply when an employee is failing in a persistent or significant way to carry out their duties due to capability (would but can't).

### **4.3 Responsibilities of Employees**

Employees have a contractual responsibility to perform at a satisfactory level and are expected to be committed to achieving and maintaining such levels of performance.

Employees are expected to attend any meetings and hearing convened in accordance with the Capability Policy and Procedure.

## **5 CAPABILITY PROCEDURE**

Capability issues should be resolved as quickly as possible (ideally within 10-12 weeks), including informal feedback as part of normal performance management arrangements. However, it is acknowledged that there may-be circumstances when the process will take longer to complete, these may include annual leave, working patterns or ill-health where reasonable adjustments need to be made under the Equality Act 2010.

### **5.1 Informal Process**

The informal process is normally the most proactive way of resolving a performance issue as this normally means that the concern or issue is at an early stage and there is scope to try and resolve the issues quickly through normal performance management arrangements, i.e. through regular and documented one to one meetings.

The manager should raise their concerns with the employee clearly and constructively and make the employee aware that the performance issues are now being managed under the informal capability process. It should be kept in mind that capability performance issues are not deliberate. Hence it is advisable to use a supportive and empathetic approach. It is equally important to ensure that the employee is fully aware of the concerns. It is also important to acknowledge aspects of the role the employee performs well, to ensure they do not feel dejected and are willing to engage in the performance improvement required SMART (Specific, Measurable, Achievable, Relevant and Time bound) objectives should be agreed and set with reasonable review times and arrangements.

This is a key stage to identify any mitigating factors or health conditions that may be affecting the underperformance and to seek further advice if required.

Training and other supportive mechanisms should also be identified. The manager should be prepared with ideas for support, but it is important that the employee also takes responsibility for identifying any support they might need. Once the support is agreed this should be implemented as soon as possible and without unreasonable delay to enable the employee the greatest possible opportunity to improve their performance.

### **5.2 Formal Process**

The formal process may be used where the employee has not improved performance under the informal procedure. It is expected that most capability issues will be managed through the informal process in the first instance, however where the incapability is sufficiently serious, it may be considered reasonable to start at the formal stage.

The employee may be accompanied by a colleague or trade union official at all steps of the formal process and should be notified of this right in invitations to meetings.

#### Stage 1:

Movement to the formal stage 1 results in an automatic first written warning and an agreed improvement plan being put in place using SMART objectives. The employee is expected to agree to the reasonable objectives within the improvement plan and to achieve them by the review date set.

This Formal Stage 1 meeting takes place between the Manager and the employee. The employee may be accompanied and the Manager may also have an impartial Councillor, or other Advisor and/or note-taker in attendance.

There are several potential outcomes of the formal review at the end of Formal Stage 1:

- The required standard of performance is met - return to normal performance management arrangements and written warning remains live for 6 months;
- The required standard of performance has not been fully met, but significant progress has been made – review period is extended for an agreed period (recommended no more than two weeks);
- The required standard of performance has not been met and significant progress has not been made – progress to Formal stage 2 of the procedure and issue final written warning

#### Stage 2:

Stage 2 is for cases where the council has implemented reasonable support to the employee and usually where Formal Stage 1 has been completed. However, there may be occasions where it is necessary to proceed straight to Formal Stage 2. The format followed is a formal hearing, which as below, follows the same process as a disciplinary hearing.

A panel consisting of the two Councillors with no prior involvement in the case, will hear all the evidence and decide the outcome.

- The employee will be notified in writing (or other accessible format) of the time and venue of the hearing, the performance/capability issues and their right to be accompanied by a trade union representative or work companion (see (5) below). They will be provided with at least ten working days' notice of the date of the hearing.
- The employee will be required to provide any documentation or witness details that they wish to be considered at the hearing at least seven working days beforehand to allow distribution.
- The Chair of the panel should ensure that a note taker takes clear notes of the hearing, that there is reasonable conduct throughout and that the hearing is not rushed through lack of time nor conversely does not continue for overly extensive periods without break or adjournment.
- The Chair will introduce everyone, outline the procedure for the hearing, clarify the alleged performance/capability issues and ensure that the employee is represented if they so wish.
- **The case for the employer** – the manager presenting the case (usually the line manager), will make an opening statement summarising their case and then present their case in full, calling all witnesses as necessary. The employee will be able to ask questions of the manager presenting the case and of any witnesses

after they have given evidence. The Chair may also ask questions of the manager and of each witness.

- **The case for the employee** – The employee or their representative will make an opening statement and present their case in full, calling witnesses as necessary. The manager presenting the case will be able to ask questions of the employee and of each witness after each has given evidence. The Chair may also ask questions of the employee and of each witness.
- **Re-examination** – The Chair will give both parties the opportunity to re-examine any evidence before proceeding to the next stage.
- **Final statements** – The manager presenting the case may make a final statement, followed by the employee. Final statements will only contain information that has already been examined during the hearing. Neither the manager nor the employee is entitled to introduce new or fresh evidence at this stage.
- **Adjournment during the Hearing** – The hearing may be adjourned at any time during the proceedings at the request of anyone present.
- **Deliberation of outcome** – The hearing will adjourn whilst the Chair decides the outcome.
- **Conclusion** – The Chair will decide the outcome of the hearing and wherever possible notify the employee on the day of the hearing. The decision will however be notified in writing (or other accessible format) to the employee within five working days of the conclusion of the hearing together with the findings and any action. The employee must be notified of their right to appeal with the outcome.

### 5.3 Formal Capability Actions

The Panel will decide on one of the following outcomes:

- The required standard of performance is met - return to normal performance management arrangements and written warning remains live for 6 months;
- The required standard of performance has not been fully met, but the chair has determined that the required standard can be met within a short period – the development Plan is extended for an agreed period (recommended no more than two weeks);
- The required standard of performance has not been met and significant progress has not been made or cannot be made within a short period or it can be evidenced that the underperformance is wilful (negligent, carelessness, idleness) - the employee should be dismissed with notice unless it can be evidenced that the performance issues are sufficiently serious as to constitute gross misconduct, in which cases they may be dismissed without notice.

### 5.4 Appeal Against Formal Capability Actions

Employees have the right to appeal the decision of the hearing. If an employee wishes to exercise this right, they will need to provide notification for the grounds of their appeal, in writing, within 10 working days from the date of the letter informing the outcome of the hearing.

Appeals are not only an opportunity for the employee to ask for their case to be reconsidered, but are also an opportunity for the employer to review the case and their responses, in light of the employee's appeal, and consider whether they need to review their position.

## 5.5 Appeals Procedure

The employee may appeal against formal capability action to the Chair of the Parish Council who will conduct the appeal along with one other Parish Councillor with no prior involvement in the case.

The Appeal will be considered by the Chair who may:

- Uphold the original decision
- Allow the appeal

The Appeal Hearing should be arranged to allow all parties time to review documentation submitted.

- The Chair will introduce everyone, outline the procedure for the Appeal Hearing, clarify the alleged capability/performance issues and ensure that the employee is represented if they so wish
- **The case for the employee** – The employee will make an opening statement and present their case, calling witnesses as necessary. The manager presenting the case (usually the chair of the previous hearing) will be able to ask questions of the employee and each witness and the Chair may ask questions of the employee and of each witness.
- **The case for the employer** – The manager presenting the case (usually the chair of the previous hearing) will make an opening statement summarising the case and then present the case in full calling witnesses as necessary. The employee will be able to ask questions of the manager presenting the case and of each witness. The Chair may also ask questions of the manager and of each witness.
- **Re-examination** – The Chair will give both parties the opportunity to re-examine any evidence.
- **Final Statements** – The employee will make a final statement, the manager presenting the case may make a final statement. These must only contain information that has already been examined during the appeal hearing. Neither the manager nor the employee is entitled to introduce new or fresh evidence at this stage.
- **Adjournment during the Hearing** – the appeal hearing may be adjourned at any time during the proceedings at the request of anyone present.
- **Deliberation of outcome** – The hearing will adjourn whilst the Chair decides the outcome
- **Conclusion** – the Chair will decide the outcome of the appeal hearing which will be notified in writing (or other accessible format to the employee within five working days of the conclusion of the appeal hearing.

## 6 ILL-HEALTH AND CAPABILITY

Some capability issues may be due to a health condition. Where there is a health condition this may be covered by the Equality Act with regard to disability and if covered there is a legal requirement to make reasonable adjustments.

Reasonable adjustments should help to prevent any arrangements an employer makes from placing an employee with a disability at a disadvantage compared to a non-disabled employee.

Some disabilities are visible and obvious, but other disabilities are not so clear. A manager is expected to make decisions regarding whether a health condition is legally protected on information they know or ought reasonably to have known. It is fine to ask an employee if

they have a health condition that may be affecting their performance and occupational health advice can be invaluable in helping management to make informed decisions especially if the manager is unaware that the employee is covered by the Equality Act 2010. The opinion of an occupational health specialist might be crucial in determining how to manage a capability issue, and can be key evidence in a claim to an employment tribunal.

It is recommended that professional advice is taken for any capability issues that have a health condition associated with them that is or may be covered by equality legislation before any action is taken.

On occasions where individuals are no longer able to carry out their role for health reasons, it may be necessary to carry out a process to dismiss them on the grounds of ill-health capability, although it may not be necessary or appropriate to issue formal warnings or go through the stages above. For any such circumstances it is recommended that professional advice is sought.

## **7 PROBATIONARY PERIOD AND CAPABILITY**

Employees who are still on their probationary period should be managed under the appropriate probationary procedures rather than through the capability procedure.

It is important to note that employees acquire rights not to be unfairly dismissed after two years of service and therefore if there are performance concerns during the probationary period these should be managed robustly during that period and a decision made regarding whether to transfer the employee to permanent establishment.

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1	Council	Version 1 of this policy and procedure produced in line with the ACAS code of practice.	9 <sup>th</sup> October, 2019	September, 2022