

Stanion Parish Council

Capability Policy

Document Number: 004

Version Number: 1.0

Document Information

Master Document: The electronic version of this document is the master. Printed copies may not contain the latest changes and should not be relied upon. The master document is published on the Stanion Parish Council (SPC) website.

Purpose: The purpose of this policy and procedure is to provide governance for employee capability matters and outline the procedures for SPC staff and councillors to follow when dealing with matters of capability relating to employee work performance.

Distribution: this policy and procedure will be made available to all SPC councillors and SPC staff via the SPC website.

Implementation: This policy and procedure will be implemented following consideration and adoption by the full Council.

Review: This document will be reviewed three years after its adoption, unless there are changes in legislation, or recommended best practice guidelines, in which case, it will be reviewed earlier, to comply with the statutory or recommended changes.

EIA Requirement: An Equality Impact Assessment has been carried out and no adverse impact has been identified.

Financial Implications: This policy and procedure has no financial implications for SPC.

Procedure Statement

This procedure is a formal, strategic level document, which provides a statement of intent explaining how SPC will comply with the legislation and any related directives of its subject matter.

This is a mandatory document and does not allow for variations of practice. It is relevant to all members of SPC, staff employed by SPC. Non-compliance with this policy and procedure may result in formal complaints being registered and/or disciplinary action.

This policy and procedure provide a corporate framework on which employee capability matters are to be dealt with. It will be reviewed by a nominated councillor every three years unless there are changes in the legislation, directives, or recommended best practice guidelines that warrant earlier review and amendment.

All amendments require the agreement of the full council and for agreement to be formally recorded.

An Equality Impact Assessment has been carried out on this Policy.

Duty to Undertake an Equality Impact Assessment

Public sector organisations have a legal duty under Section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation; advance equality of opportunity between different groups and foster good relations between different groups. Due regard comprises proportionality and relevance.

The EIA Tool

An Equality Impact Assessment (EIA) is a tool to ensure that we don't unwittingly exclude anybody from accessing the services we provide. Undertaking an EIA involves assessing the likely effects of our policies on people according to their 'protected characteristics'.

These are:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy
- maternity
- race
- religion and belief
- sex
- sexual orientation

An EIA should be applied to a Policy, Strategy, Plan, Function, Project, Service and Event. EIAs' help to identify any inequalities in the provision of services, employment, or procedural practices, and minimise the risk of exposure to claims of discrimination.

This policy and procedure confirms the steps to be taken to ensure compliance with relevant legislation and provide transparency and consistency in the method by which employee capability matters are dealt with. The method outlined in this document provides a standardised transparent process, which ensures that a fair and equitable approach is taken in dealing with matters of employee capability. This process is managed by members of SPC.

Purpose and Scope

This policy and procedure is designed to help all SPC members and employees to understand the requirement to achieve and maintain an acceptable standard of work performance and the methods by which SPC will endeavour to provide support to assist the employee in achieving a satisfactory standard or output.

Introduction

Stanion Parish Council (SPC) recognises that from time to time staff may experience difficulties, which impact on their ability to carry out their work. SPC recognises that poor job performance due to incapability cannot be treated as a disciplinary offence.

There can be reasons for poor job performance other than misconduct. In the interests of dealing with such problems fairly and consistently, SPC has set out the following procedures, which are not part of the disciplinary procedures that apply to misconduct.

SPC recognises its responsibilities for employees and duties under the Health and Safety at Work Act 1974 and the Equality Act 2010, to manage issues relating to staff capability sensitively, in so far as is reasonable and able to do so. These procedures will be adopted in the interests of fairness for the management and support of employees who, due to capability are unable to attend work. Such systems should assist the employee in making a return to work, in so far as it is practicable.

Capability is dealt with by SPC under 2 headings:

- Managing Performance – procedure below refers
- Managing Attendance - Sickness and Absence Management Policy refers

Procedures - Managing Performance

The procedure for managing performance will apply where an employee is clearly making every effort to fulfil the requirements of the post but is unable to do so due to reasons such as, changes in the role; loss of skills, ability and/or knowledge, impact of physical or mental impairment

Investigation

The cause of poor performance will be investigated and established by SPC. The employee will be asked to provide an explanation as to the reasons for poor performance and the explanation will be checked.

Incapability/poor performance will arise where the employee has been set realistic targets and objectives and cannot achieve them through no fault of their own. (*An example of incapability is failure due to medical conditions.*) If realistic targets and objectives have been set but the employee fails to take positive action, which they are capable of, their performance may be regarded as misconduct under the Disciplinary Procedure.

At each stage of the procedure, and as specified below, the employee will normally be interviewed by their line manager or another member of the Council, as appropriate, to review the relevant factors.

All warnings issued will be confirmed to the employee in writing and a copy kept in the employee's personnel file.

Right to be Accompanied

At any formal stage of the procedure an employee has the right to be accompanied. The statutory right is to be accompanied by a fellow employee, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee. As this is an internal procedure there is no provision to have any external person accompany or represent the employee (*e.g. partner, parent, solicitor etc.*).

Employees may alter their choice of companion if they wish but must communicate this change to the employer in a timely manner, in advance of the meeting date. As a matter of good practice, in making their choice employees should bear in mind the practicalities of the arrangements.

To exercise the statutory right to be accompanied employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, an employee should provide enough time for the Council to deal with the companion's attendance at the meeting. Employees should also consider how they make their request so that it is clearly understood, for instance by letting the Council know in advance the name of the companion where possible, and whether they are a fellow employee or trade union official or representative. If an employee's chosen companion will not be available at the time proposed for the meeting by the Council, the Council must postpone the meeting to a time proposed by the employee, provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

The companion should be allowed to address the meeting to put and sum up the employees' case, respond on behalf of the employee to any views expressed at the meeting, and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the Council from explaining their case.

Stage One: Training and Supervision

Where the reason for poor performance is lack of capability, the employee will be invited to comment and discuss ways to assist them to reach the required standards. These may include:

- Appropriate in-house training, and or externally sourced training, if this has not already been provided
- The provision of a mentor for a specified period of time
- A programme of regular supervision and support by their Line Manager or another member of the council

Arrangements will be made to carry out any remedial measures and to review progress and performance at the end of an appropriate period of time. The timeframe will be determined by the Line Manager and another member of the Council and the employee advised accordingly. The employee will be advised that failure to meet the improved standard of performance by the end of the specified timeframe will result in the next stage of the procedure being implemented.

Stage Two: First Written Warning

If, despite following the agreed measures, and at the end of the review period, the required improvement in performance has not been achieved, the employee will be given a First Written Warning by SPC. This will state:

- The reason for the warning
- The level and improvements in performance required
- A realistic timeframe for achieving the improved performance
- How and by whom performance will be monitored
- That the consequence of failure to achieve and maintain the required improvement will result in a Final Written Warning being issued
- The duration that the warning will be held on the employee's personnel file

Stage Three: Final Written Warning

If at the end of the specified timeframe there is no improvement, or insufficient improvement to have had any real effect on performance, or the improvement

throughout is sporadic, the employee will be given a Final Written Warning setting out the details as above with a written warning that failure to improve may result in dismissal. Final written warnings will have a time limit of 12 months.

Stage Four: Dismissal

Before implementing stage four, the Line Manager is required to seek independent legal advice from an Employment Law practitioner.

If at the end of the specified timeframe there is still no improvement, or insufficient improvement to have had any real effect on performance, or the improvement throughout is sporadic, the employee may normally be dismissed with notice.

Appeals

If the employee wishes to appeal against stages 2, 3 or 4, the appeal must be made to the Chairman of the Parish Council. The employee must put their request in writing, with a copy sent to the Clerk to the Council, setting out the grounds of appeal, within 5 working days of the decision being communicated to them.

On receipt of the appeal the Council will convene an Appeals Panel, consisting of at least two Councillors.

The Appeals Panel is required to be composed of members who did not deal with the first instance decision. The Appeals Panel will arrange to meet with the employee and the line manager of the employee concerned. The meeting is required to be held without unreasonable delay. Following consultation with all parties, the Appeal Panel will decide to either:

1. Reject the appeal and confirm the original action, or
2. Uphold the appeal and either revoke or reduce the original action

The outcome of the Appeal will be notified to the employee in writing within one week of the Appeal Hearing taking place.

The decision of the Appeals Panel is final.

Record Keeping

In all cases, written records, including the employer's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the DPA 1998/2018.

Policy Review

This Policy and will be reviewed on an annual basis.

Definitions

Clerk and/or Proper Officer – The Clerk to Stanion Parish Council
Council – Stanion Parish Council
Members – Councillors of Stanion Parish Council

Signature: Signed on original

Date: 14.1.19