



# Onchan District Commissioners

## **Capability Policy and Procedure (NJC Terms & Conditions)**

Draft: December 2019  
Review: December 2021



## **Contents**

- 1. Scope & Purpose**
- 2. Policy**
- 3. Definition**
- 4. Key Principles**
- 5. Procedure**
- 6. Structure for Meetings**
- 7. Written Confirmation**
- 8. Informal Stage :-**
  - a. Standards have been met/sufficient progress has been made**
  - b. Standards have not been met/sufficient progress has not been made**
- 9. Stage One:-**
  - a. Standards have been met/sufficient progress has been made**
  - b. Standards have not been met/sufficient progress has not been made**
- 10. Stage Two:-**
  - a. Standards have been met/sufficient progress has been made**
  - b. Standards have not been met/sufficient progress has not been made**
- 11. Termination**
- 12. Appeal**
- 13. Data Protection**
- 14. Loss of Qualification**

## Capability Policy & Procedure

### Policy Review

#### History:-

Please be aware that a hard copy of this document may not be the latest available version, which is available in the Authority's document management system, and which supersedes all previous versions.

Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

<b>Effective from:</b>	<b>Replaces:</b>	<b>Originator:</b>	<b>Page X of Y</b>
December 2019	2006	Chief Executive/Clerk	1 of 7
<b>Management Team Approval:</b>			
<b>Board Ratification:</b>			

<b>History or Most Recent Policy Changes – MUST BE COMPLETED</b>		
Version:	Date:	Change:
December 2019	04/12/19	Procedure
December 2019	04/12/19	Appeal Procedure
December 2019	04/12/19	Includes Data Protection
December 2019	04/12/19	Includes loss of qualifications

## Capability Policy & Procedure

### 1. Scope and Purpose

This Policy and Procedure applies to employees of Onchan District Commissioners ("the Authority") employed under the provisions of the National Joint Council for Local Government Services: National Agreement on Terms and Conditions of Service, ("The Green Book") as varied by Local Agreement, including full, part time and limited term employees. Manual and Craft workers employed by the Authority will be subject to the procedures set out in Appendix 7 of the Manual & Craft Workers Agreement 2015.

The focus of this Policy and Procedure is to resolve less than satisfactory performance to enable the employee to perform to the standard required and seek/receive appropriate support as necessary.

### 2. Policy

The Authority is committed to ensuring that all employees are given the opportunity and support to deliver and maintain a high level of performance at work.

All employees should be made fully aware of the performance standards they are expected to deliver, including standards with regard to attendance at work and should have the opportunity for regular meetings with their line manager to discuss their work and performance.

It is the responsibility of line managers to ensure that any performance issues are addressed at an early stage and where possible resolved, initially on an informal basis, without recourse to the formal procedure.

The following procedure provides a framework for managing capability in a constructive, fair and consistent manner.

### 3. Definition

The Authority differentiates between:-

- a deliberate or wilful failure on the part of the employee to perform to the standards required (misconduct) in which case the Disciplinary Procedure will apply; and
- where an employee is lacking in knowledge, skill or ability and so cannot carry out their duties to the standard required, including the standard of attendance (e.g. short term/long term absence due to health reasons) in which case the following procedures will apply in order to bring about the required improvement in performance.

### 4. Key Principles

The following principles will apply to the application of this procedure:-

- a) Line managers should be supportive, help the employee to take action to improve performance and consider any mitigating circumstances that may be affecting performance.
- b) The employee is responsible for co-operating with the line manager in improving their performance and attending meetings under this procedure.

## Capability Policy & Procedure

- c) Information obtained under this procedure will be treated in confidence and in accordance with the Authority's Data Protection Policy.
- d) A meeting will be held to discuss the area(s) of concern in accordance with Clause 5.1 (Structure for meetings). The employee has the right to be accompanied if they wish, by a work colleague or trade union representative at any formal stage meeting where a warning may be issued. The employee's companion has the right to address the meeting to put the employee's case, sum up the case and respond on the employee's behalf to any views expressed at the meeting. The companion may also confer with the employee during the meeting. The companion may not answer questions on behalf of the employee, address the meeting if the employee does not wish this, or prevent the employer from explaining their case.
- e) An employee will not normally be dismissed for performance reasons without previous warnings. However, where performance falls significantly below the acceptable standard and the actual or potential consequences are, or could be extremely serious, moving straight to Formal Stage Two (b) Termination of Employment may be appropriate in exceptional circumstances.

### **5. Procedure**

#### **5.1 Structure for meetings:-**

Applicable at Informal and Formal Stages One and Two of the procedure the line manager will:-

- a) Clarify the concern about performance and how it does not meet the required standard, providing examples/evidence to support this;
- b) Reiterate the standards required;
- c) Discuss with the employee the reasons for not achieving the required standards and/or any issues that may contribute to this;
- d) Confirm the standards to be achieved, and measures that might be put in place by the employee and/or the manager e.g. further training;
- e) Determine a reasonable monitoring period to achieve the required standard and agree a date to review performance. Interim reviews may be appropriate;
- f) Explain the potential consequences of not achieving the required improvement in performance i.e. move to the next stage, which may lead to termination of employment.

#### **5.2 Written Confirmation**

Following each meeting the line manager will confirm in writing:-

- the discussion;
- agreed outcomes;
- monitoring period;
- review date; and
- consequences of not meeting the standard(s)

#### **5.3 Informal stage**

If it becomes clear that the employee is not performing their duties to the required standard due to a lack of knowledge, skill or ability, including the standard of attendance the line

## Capability Policy & Procedure

manager will arrange a meeting to discuss the matter with the employee in accordance with the required structure for meetings (see clause 5.1 above).

If at the end of the monitoring period:-

**a) Standards have been met/sufficient progress has been made:-**

The line manager will discuss progress with the employee and may consider the matter to be resolved and take no further action or may decide to continue monitoring the employee's performance for a further specified period to ensure the standard is achieved/maintained.

Following this review the line manager will confirm the discussion and outcome in writing.

**b) Standards have not been met/sufficient progress has not been made:-**

If it has become evident that performance during the informal monitoring period has not improved sufficiently, the manager will arrange a Formal Stage One meeting at which the employee may be accompanied.

### 5.4 Formal stages

**STAGE ONE:-**

At this formal meeting held in accordance with the required structure (see Clause 5.1 above) at which the employee is entitled to be accompanied, the employee will be informed about the precise nature of the poor performance, the level of improvement required and the time for achieving that improvement. The line manager will confirm the outcome of this meeting as soon as possible in writing (see Clause 5.2 Written Confirmation) and a copy will be placed on the employee's personal file.

At the end of the specified period a review meeting will be held to confirm:

**a) Standards have been met/sufficient progress has been made**

If the required standards are met this will be confirmed in writing with an expectation that the agreed standards will be maintained.

If performance is not subsequently maintained at the standard required, formal procedures will be instigated at the next stage (Formal Stage Two). This must be advised (in the written confirmation).

**OR**

**b) Standards have not been met/sufficient progress has not been made:-**

If the review confirms that performance has not improved sufficiently the manager will progress to Formal Stage Two of this procedure.

**STAGE TWO:-**

At this formal meeting held in accordance with the required structure (see Clause 5.1 above) at which the employee is entitled to be accompanied, the employee will be informed about the

## Capability Policy & Procedure

precise nature of the poor performance, the level of improvement required and the time for achieving that improvement **The line manager will advise the employee that failure to achieve the required standard may result in termination of employment.** The line manager will confirm the outcome of this meeting as soon as possible in writing (see Clause 5.2) and a copy will be placed on the employee's personal file.

At the end of the specified period a review meeting will be held to confirm:-

**a) Standards have been met/sufficient progress has been made:-**

If the required standards are met this will be confirmed in writing. There is an expectation that the agreed standards will be maintained.

If performance is not subsequently maintained at the standard required formal procedures will be re-instigated at this stage (Formal Stage Two). This must be advised (in the written confirmation).

**OR**

**b) Standards have not been met/sufficient progress has not been made:-**

Should all attempts to improve performance not bring about the required standard the manager will consider:-

- 1) a further monitoring period allowed to demonstrate improvement;
- 2) voluntary redeployment should this be an option, but not necessarily on equivalent terms (with an extension of the monitoring period at Formal Stage 2); and
- 3) termination of employment.

and a formal meeting will be arranged with the employee who will be entitled to be accompanied.

If the decision is made to terminate employment on the grounds of capability the line manager will advise the employee of this decision at the meeting and determine the period of notice to be worked/paid in lieu in accordance with the terms and conditions of employment. The employee will be advised of their right of appeal.

**c) Termination of Employment**

A letter of termination of employment will be issued confirming the reason(s) for termination, and advising the right of appeal and the procedure for appeal.

## **7. Appeal Procedure**

There is the right of appeal against a decision to terminate employment. The grounds of appeal should be submitted in writing to the Chief Executive/Clerk within 5 working days of written confirmation of the decision to terminate employment being received.

An appeal meeting will be held with Chief Executive/Clerk within 10 working days of receipt of the appeal or as soon as is reasonably practicable. The line manager who made the decision to

## Capability Policy & Procedure

terminate employment will be in attendance. The employee is entitled to be accompanied if they wish by a work colleague or trade union representative.

Within 5 working days of the appeal meeting the outcome will be confirmed in writing explaining the grounds on which the decision was reached.

Whatever the outcome, the written decision of the appeal meeting is final and no further appeal within the Authority may be made.

Until the outcome of the appeal is determined, the employment remains terminated.

### **8. Data Protection**

The Authority processes personal data collected during the implementation of the Capability procedure in accordance with its Data Protection Policy. Data is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the Capability Procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Authority's Data Protection Policy immediately. It may also constitute misconduct, which will be dealt with under the Disciplinary Procedure.

### **9. Loss of Qualifications**

Where an employee no longer has the prerequisites to continue to perform their duties (e.g. driving licence) management will consider

- whether adjustments can be made to existing duties, either temporarily or permanently so that employment can continue, and if not
- whether the employee can be moved to another position temporarily or permanently which will require an amendment to terms and conditions of employment.

Consideration may also be given to return to original duties, once the qualification has been regained.

If amendment of existing duties or redeployment is not possible employment will be terminated on the grounds of capability with the subsequent right of appeal.