



ANDOVER TOWN COUNCIL CAPABILITY POLICY – 2019 (March 2019)

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The General Data Protection Regulation (GDPR) standardizes data protection law across all 28 EU countries and imposes strict new rules on controlling and processing personally identifiable information (PII). It also extends the protection of personal data and data protection rights by giving control back to EU residents. GDPR replaces the 1995 EU Data Protection Directive and goes into force on May 25, 2018. It also supersedes the 1998 UK Data Protection Act.

GDPR PRIVACY STATEMENT

(General Data Protection Regulations)

This is a privacy statement of Andover Town Council. Our registered office address is 68b High Street, Andover, Hampshire, SP10 1NG.

INTRODUCTION

- This is a statement to inform you of our policy about all the information we record about you. It sets out the conditions under which we may process any information that we collect from you or that you provide to us. Any information that identifies you (“Personal Information”) is used to provide you with the services you require.



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- We regret that if there are one or more points below that you are not happy with us holding, we have to hold this under General Data Protection Regulations (GDPR) law.
- We take seriously the protection of your privacy and confidentiality. We understand that all visitors to our websites, customers and clients are entitled to know that their personal data will not be used for any purpose other than the lawful basis upon which it was provided for.
- We undertake to preserve the confidentiality of all information that you provide to Andover Town Council.
- Our policy complies with UK law accordingly implemented including that required by the GDPR.
- The law requires us to tell you about your rights and our obligations to you in regards to the processing and control of your personal data. We do this now by requesting that you read the information provided at www.knowyourprivacyrights.org.
- Except as set out in our GDPR policies (which can be found at www.andover-tc.gov.uk) we do not share, sell or disclose any personal data to any other organisation or third party.

THE BASIS ON WHICH WE PROCESS INFORMATION ABOUT YOU

The law requires us to determine under which of the six defined bases, we process different categories of your personal information. If a basis on which we process your personal information is no longer relevant, your personal information will be destroyed.

If the basis changes then as required by law, we will notify you of the change and of any new basis under which your personal data is being held.

ALLOTMENTS

Data is held on an internal Town Council database/software system and is used to send you Newsletters, Yearly Invoices, Receipts, Follow-Up letters and Terminations if necessary.

Tenancy Agreements are held for 1 year after the expiry of the agreement under the GDPR guidelines (subject to change).

EMAILS & WEBSITES

If you contact the Town Council via email or our website, your personal data i.e. email address, will be kept for the time it takes to answer your enquiry, unless another lawful reason becomes apparent, which we will notify you of, after which time it will be destroyed.



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For details of our full Privacy Policy, please refer to www.andover-tc.gov.uk. Alternatively, you may write to us at Andover Town Council, 68b High Street, Andover, Hampshire, SP10 1NG and we will send you a hard copy.



1. Purpose

The purpose of this policy is to describe the required standards of performance and the consequences of a failure to deliver to the standards.

It also sets out the procedural steps which Andover Town Council will take in response to performance which falls short of those standards. They are designed to ensure fair and consistent treatment of staff.

The policy has been developed with regard to the statutory ACAS Code of Practice for Disciplinary and Grievance Procedures April 2009. Andover Town Council intends to follow the accompanying detailed booklet: 'Discipline and grievances at work: the ACAS guide', wherever appropriate.

2. Scope

This policy applies equally to full time and part time employees on a permanent or fixed-term contract, regardless of length of service.

This policy applies where there is a genuine lack of capability displayed in the work that the employee is asked to deliver (e.g. lack of skill, aptitude, knowledge or ability).

It does not apply to cases of poor attendance or wilful poor performance. In those circumstances the Attendance and Absence Policy and the Discipline Policy will be invoked respectively. Nothing in this policy prevents Andover Town Council from taking action under these policies if considered appropriate. Exceptionally, a very serious failure to meet performance standards (e.g. negligence which amounts to gross misconduct) may lead to your dismissal without prior warnings and without a notice period under the terms of the Discipline Policy.

This policy does not impact upon the Pay and Grading Framework under NJC model, which is designed to reward good performance over and above the minimum required standard.

This policy does not form part of any employee's contract of employment. Andover Town Council may change it from time to time and may depart from it depending on the circumstances of any case.



3. Setting the Standard

You must deliver your day-to-day work as outlined in your job description and annual objectives in a timely and professional manner and fully meet the standards and competencies for your job role level as set out in the Competency Framework. Poor performance occurs where the quality of work deteriorates below the required standard due to lack of ability, skill or knowledge.

Andover Town Council will aim to ensure that:

- Employees understand what is expected of them in terms of performance,
- That performance is monitored via regular supervision meetings with your line manager and via the annual performance management process,
- Employees are given appropriate training and support to meet those standards.

Employees are not normally dismissed for performance reasons without previous warnings.

4. Policy Statement

- 1.1 The primary aim of this procedure is to provide a framework within which we 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 and to give employees the opportunity to respond at a hearing before any formal action is taken.

5. What is covered by the Policy?

This policy is used to deal with poor performance. It does not apply to cases involving genuine sickness absence, proposed redundancies or misconduct. In those cases, reference should be made to the appropriate policy or procedure.

6. Identifying Performance Issues

- 1.3 In the first instance, performance issues should normally be dealt with informally between you and the Town Clerk or the Chairman of the Staffing Sub-Committee as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes



of any future capability hearings. The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help:

- (a) clarify the required standards;
- (b) identify areas of concern;
- (c) establish the likely causes of poor performance and identify any training needs; and/or
- (d) set targets for improvement and a time-scale for review.

- 1.4 Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period, dismissal without previous warnings may be appropriate.
- 1.5 If poor performance is due to a domestic, personal or work-related problem, you must explain this to the Town Clerk or Chairman of the Staffing Sub-Committee. These situations will be dealt with sensitively.
- 1.6 If we have concerns about your performance, we will undertake an assessment to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

7. Disabilities

- 1.7 Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider making adjustments to this procedure in appropriate cases.
- 1.8 If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact the Town Clerk or Chairman of the Staffing Sub-Committee.



8. Confidentiality

- 1.9 Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.
- 1.10 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 1.11 You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

9. Notification of a Capability Hearing

- 1.12 If we consider that there are grounds for taking formal action over alleged poor performance, you will be required to attend a capability hearing. We will notify you in writing of our concerns over your performance, the reasons for those concerns, and the likely outcome if we decide after the hearing that your performance has been unsatisfactory. We will also include the following where appropriate:
 - (a) A summary of relevant information gathered as part of any investigation.
 - (b) A copy of any relevant documents which will be used at the capability hearing.
 - (c) A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.
- 1.13 We will give you written notice of the date, time and place of the capability hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time to prepare your case based on the information we have given you.

10. Your Right to be Accompanied at Hearings

- 1.14 You may be accompanied at any Capability Hearing or an appeal hearing by a work colleague, a trade union representative or an official employed by a trade union. You must tell the manager conducting the hearing who your chosen companion is, in good time before the hearing.



- 1.15 Your companion is allowed to:
- (a) Put forward and summarise your case,
 - (b) Ask questions of clarification,
 - (c) Respond to views on your behalf; and
 - (d) Confer with you.
- 1.16 Your companion does not have the right to answer questions for you or to prevent Andover town Council from putting forward its case or to address the meeting if you do not wish it.
- 1.17 If you wish to be accompanied you must make a reasonable request to your manager in advance of the meeting. Please note your companion has the right to decline to attend. If they choose to accompany you, they will be allowed reasonable time off from duties without loss of pay.
- 1.18 In some circumstances your choice of companion may not be allowed, for example, if they have a conflict of interest or could prejudice the meeting. In those cases, you may be asked to choose someone else.
- 1.19 It is your responsibility to inform your companion of the date, time and place of the meeting. If your companion is not available at short notice, the meeting may be delayed for a short period. Andover Town Council reserves the right to ask you to choose someone else if the meeting would have to be delayed for over 5 working days because your companion is unavailable.
- 1.20 Andover Town Council may, in its discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family), where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English.

11. Procedure at Capability Hearings

- 1.21 If you or your companion cannot attend the hearing you should inform us immediately and we will usually arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example, for health reasons), we may have to take a decision based on the available evidence.



- 1.22 The hearing will normally be held by the Town Clerk or Chairman of the Staffing Sub-Committee.
- 1.23 The aims of a capability hearing will usually include:
- (a) Setting out the required standards that we believe you may have failed to meet, and going through any relevant evidence that we have gathered.
 - (b) Allowing you to ask questions, present evidence, respond to evidence and make representations.
 - (c) Establishing the likely causes of poor performance including any reasons why any measures taken so far have not led to the required improvement.
 - (d) Identifying whether there are further measures, such as additional training or supervision, which may improve performance.
 - (e) Where appropriate, discussing targets for improvement and a time-scale for review.
 - (f) If dismissal is a possibility, establishing whether there is any likelihood of a significant improvement being made within a reasonable time and whether there is any practical alternative to dismissal, such as redeployment.
- 1.24 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.
- 1.25 We will inform you in writing of our decision and our reasons for it, usually within 14 days of the capability hearing. Where possible we will also explain this information to you in person.

12. Stage 1 Hearing: First Written Warning

- 1.26 Following a Stage 1 capability hearing, if we decide that your performance is unsatisfactory, 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 period for review and the system for monitoring your performance.



- (e) The consequences of failing to improve within the review period, or of further unsatisfactory performance.
- 1.27 The warning will normally remain active for six months from the end of the review period, after which time it will be disregarded for the purposes of the capability procedure.
- 1.28 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.
- 1.29 Your performance will be monitored during the review period and we will write to inform you of the outcome:
- (a) if the Town Clerk or Chairman of the Staffing Sub-Committee is satisfied with your performance, no further action will be taken;
 - (b) if the Town Clerk or Chairman of the Staffing Sub-Committee is not satisfied, the matter may be progressed to a Stage 2 capability hearing; or
 - (c) if the Town Clerk or Chairman of the Staffing Sub-Committee feels that there has been a substantial but insufficient improvement, the review period may be extended.

13. Stage 2 Hearing: Final Written Warning

- 1.30 If your performance does not improve within the review period set out in a first written warning, or if there is further evidence of poor performance while your first written warning is still active, Andover Town Council may decide to hold a Stage 2 capability hearing. We will send you written notification as set out in paragraph 9.
- 1.31 Following a Stage 2 capability hearing, if we decide that your performance is unsatisfactory, 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 period for review; and
 - (e) the consequences of failing to improve within the review period, or of further unsatisfactory performance.



- 1.32 A final written warning will normally remain active for 12 months from the end of the review period. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future capability proceedings.
- 1.33 Your performance will be monitored during the review period and we will write to inform you of the outcome:
- (a) if your line manager is satisfied with your performance, no further action will be taken;
 - (b) if your line manager is not satisfied, the matter may be progressed to a Stage 3 capability hearing; or
 - (c) if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

14. Stage 3 Hearing: Dismissal

- 1.34 We may decide to hold a Stage 3 capability hearing if we have reason to believe:
- (a) your performance has not improved sufficiently within the review period set out in a final written warning;
 - (b) your performance is unsatisfactory while a final written warning is still active; or
 - (c) your performance has been grossly negligent such as to warrant dismissal without the need for a final written warning.

We will send you written notification of the hearing as set out in paragraph 9.

- 1.35 Following the hearing, if we find that your performance is unsatisfactory, we may consider a range of options including:
- (a) Dismissing you.
 - (b) Demote you.
 - (c) Redeploying you into another suitable job at the same or a lower grade.
 - (d) Extending an active final written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
 - (e) Giving a final written warning (where no final written warning is currently active).



- 1.36 Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

15. Appeals Against Action for Poor Performance

- 1.37 If you feel that a decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Chairman of the Staffing Sub-Committee within one week of the date on which you were informed in writing of the decision.
- 1.38 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 1.39 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 a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.
- 1.40 We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after you receive the written notice.
- 1.41 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.
- 1.42 Where possible, the appeal hearing will be conducted by a Councillor of the Town Council who has not been previously involved in the case.
- 1.43 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.
- 1.44 Following the appeal hearing Andover Town Council may:
- (a) confirm the original decision;



- (b) revoke the original decision; or
- (c) substitute a different penalty.

1.45 We will inform you in writing of our final decision as soon as possible, usually within 5 working days of the appeal hearing. Where possible we will also explain this to you in person. The decision on appeal is final and there is no further right of appeal.

16. Document Information

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17. Document Control

Date	Version	Description	Sections Affected	Approved by
Mar 2018	1	1 st Draft	All	Policy & Resources Committee
May 2018	2	2 nd Draft	All	Council
Mar 2019	3	3 rd Draft	All	Council

Disclaimer:

A printed version may not be the current version.

A current version may be obtained in the required format from the Town Clerk's Office at Andover Town Council.

Source: (Town Clerk 2011)

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Cambridge University, Human Resources.