



# Rutland County Council

## CAPABILITY POLICY AND PROCEDURE

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## **Summary of document**

This Policy and Procedure provides a clear framework in which concerns regarding an employee's performance can be positively and fairly managed. It should be read alongside the guidance note for managers.

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## **1.0 INTRODUCTION**

1. The Policy and Procedure aims to provide a framework for reviewing and managing an employee's capability. The procedure should support and assist the employee in performing to the required standard 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 give employees an opportunity to respond at a hearing before any formal action is taken.

## **2.0 SCOPE**

- 2.1 The Capability policy and procedure applies to all employees of Rutland County Council, including permanent, temporary and casual employees. Excluded from this policy are:
  - 2.1.1 The Chief Executive and other officers whose contract relates to the Joint Negotiating Committee (JNC) for Local Authority Chief Executives.
  - 2.1.2 Employees based in Schools and Colleges.
- 2.2 The Council's policy and procedure on Probation should be applied for employees within their 6 months probationary period (and during any extension of probation within that policy).
- 2.3 Issues of conduct will be managed under the Council's Disciplinary Policy and Procedure eg. an employee's unwillingness to do the job – as opposed to 'inability' to do the job.
- 2.4 Concerns regarding an employee's ill-health and absence will be managed through the Council's Sickness Absence Policy.

## **3.0 PRINCIPLES**

- 3.1 Promote a consistent approach to incapability resulting wherever possible in the employee being able to perform satisfactorily.
- 3.2 Recognise the value of involving Trade Unions at an early stage.
- 3.3 Act sensitively when seeking to resolve an incapability problem.
- 3.4 When undertaking the resolution of capability issues, to clearly define at the earliest possible stage, the performance standards required of the employee,

the support available to the employee and the timescales within which improvements must be made.

- 3.5 An employee will not normally enter into the Formal Procedure until they:
- have received feedback on their performance
  - are clear of their shortcomings
  - have received training and support
  - have had the opportunity to demonstrate good performance against an agreed improvement plan.
- 3.6 The nature of the concerns, level of seriousness and cause(s) will be identified through structured collection and analysis of information eg. job description, job standards, details of previous training, personnel records, risk assessments, Performance Development Reviews, 1-1s.
- 3.7. If an employee is unable to meet the required standards and all stages of the policy and procedure have been exhausted, the procedure may lead to dismissal.

## **4.0 DISABILITY**

- 4.1 In both the informal and formal stages of this Policy, 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 an employee's working arrangements, including changing their duties or providing additional equipment or training.
- 4.2 Employees should notify their line manager of any medical condition they consider relevant.

## **5.0 CONFIDENTIALITY**

- 5.1 It is the Council's aim to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees and their representatives must treat as confidential any information communicated to them in connection with a matter which is subject to the Policy.
- 5.2 Employees and their representatives or witnesses must not make electronic recordings of any meetings or hearings conducted under this Policy.
- 5.3 Employees will normally be told the names of any witnesses whose evidence is relevant to their capability hearing unless the Council believes that a witnesses' identity should remain confidential.

## **6.0 INFORMAL STAGES**

- 6.1 In the first instance, performance issues will normally be dealt with informally as part of day-to-day management.
- 6.2 The Line manager should arrange a meeting with the employee in order to explain the areas of concern and to identify the reasons for the unacceptable level of performance.
- 6.3 There is no automatic right for the employee to be accompanied by a workplace colleague or trade union representative although in certain circumstances exception may be made, for example where it is necessary to help overcome a disability or language barrier etc.
- 6.4 Informal meetings should follow the following format:
- Line Manager to explain the nature of the shortfall in performance – evidence and examples must be provided.
  - Employee has the opportunity to respond to the comments and offer any mitigating circumstances.
  - Line Manager to clarify the expectations and standard of performance required.
  - Agree an improvement plan identifying what improvement is required, timescales and support/assistance required.
  - Notes should be kept of the meeting and the improvement plan provided to the employee after the meeting.
- 6.5 The support programme will include training, monitoring and consideration of adjustments to working arrangements, welfare support, counselling and risk assessment as appropriate.
- 6.6 The period of improvement will normally be between 4-8 weeks depending on the nature of the role. The Line Manager should determine the reasonable period of time that an employee may be able to demonstrate improvement and achievements of targets within the plan. In some circumstances, improvement may need to be virtually immediate, in other cases, improvement will take longer.
- 6.7 Review meetings will take place between the Line Manager and employee as a minimum, every 2 weeks – the Line Manager will provide a written update to the employee of progress against the plan.
- 6.8 The review meetings do not replace the normal day to day management between a line manager and employee and any issues should be addressed as they arise.

6.9 Other, alternative steps arising from an informal meeting may be:

- Take no further action – discussion has identified mitigating circumstances that explain the performance and which are now addressed.
- Offer informal counselling – where external factors may be affecting the individual's ability to maintain required standards, counselling should be offered as a means of supporting the employee in making the necessary improvements.
- Invoke other procedures, eg. Disciplinary if the issues are in fact related to conduct.

6.10 If the employee meets the required standard of performance during the review period, the Line Manager will inform them and no further action will be taken. The line manager will keep notes of their informal discussions with the employee and whilst they will be placed on the employees personal file, they will be ignored for the purposes of any future capability hearings.

6.11 If the employee continues to not meet the required standards or targets during the review period, the Line Manager will inform them that the formal incapability procedure will commence.

6.12 There is no right of appeal within the Informal Procedure.

## **7.0 FORMAL PROCEDURE**

The formal procedure will be used for more serious cases or in any case where an informal earlier discussion has not resulted in satisfactory improvement.

### **7.1 Stage 1 – Formal Capability meeting**

1. If the line manager considers that there are grounds for taking formal action over alleged poor performance, employees will be required to attend a capability meeting.
2. The line manager will advise the employee that they are required to attend a Stage 1 – Formal review of their performance.
3. The employee will be given at least 5 working days written notice of the proposed review within which the line manager will set out their concerns over the employee's performance, the reasons for those concerns and the likely outcome if it is decided after the hearing that their performance has been unsatisfactory. The line manager will also include where appropriate
  - A summary of the relevant information gathered as part of any investigation
  - A copy of any relevant documents that will be referred to at the review
  - A copy of any relevant witness statements as appropriate.

4. An employee may bring a companion (workplace colleague or trade union representative) to any formal capability review or appeal under this Policy. The employee must tell the line manager conducting the hearing who their chosen companion is in good time before the hearing. A companion is allowed reasonable time off duties without loss of pay but no-one is obliged to act as a companion if they do not want to. If the employee's choice of companion is unreasonable, the line manager may require them to choose someone else. An HR Adviser will also be present to take notes and provide procedural advice.
5. The employee must inform the line manager immediately if either they or their companion cannot attend. In exceptional circumstances the review will be rearranged. However, the employee must make every effort to attend the hearing and failure to attend without good reason will normally result in the line manager taking a decision in the absence of the employee.
6. The line manager will present facts and evidence that illustrate the concerns regarding the employee's capability.
7. The employee will have an opportunity to offer a full explanation.
8. The review will be adjourned if the line manager needs to gather any further information or give further consideration to the matters discussed. In such circumstances, the employee will be given a reasonable opportunity to consider any new information obtained before the review is reconvened.
9. Following the meeting, the Line Manager will produce and issue to the employee an Improvement Action Plan which clearly outlines:
  - The improvements, targets, performance levels to be reached
  - Timescales and targets for improvement
  - Support and training to be provided
10. The employee will be aware that if improvement is not demonstrated, then the next stage of the Formal procedure will commence.
11. Review meetings will take place at least every 2-4 weeks to monitor and record progress.
12. The period of formal review/progression to Stage 2 will take place between 6 and 8 weeks unless otherwise agreed.
13. At the end of the review period, the Line Manager may extend the period for improving performance, by up to 8 weeks, if:
  - There have been positive signs of progression and improvement
  - There are other mitigating circumstances that would justify an extension of time, eg. absence through illness, external or 3<sup>rd</sup> party factors that have hampered progress.
14. If the employee meets the required standard of performance during the review period, the Line Manager will inform them and no further action will be taken.



The details of the review will remain permanently on the employee's personal file but will be disregarded for the purpose of this policy after a period of 6 months.

15. However, if within the 6 month period the employee's performance is again considered unsatisfactory in the same role and there is no acceptable reason, Stage 1 of the formal procedure will be re-instigated.
16. If the employee continues to not meet the required standards or targets during the review period, the Line Manager will inform them that they will proceed to Stage 2.

## **7.2 Stage 2 – Formal Capability meeting**

1. The Line Manager will advise the employee that they are required to attend a Stage 2 – Formal review of their performance.
2. The employee will be given at least 5 working days written notice of the proposed review within which the line manager will set out their concerns over the employee's performance, the reasons for those concerns and the likely outcome if it is decided after the hearing that their performance has been unsatisfactory. The line manager will also include where appropriate
  - A summary of the relevant information gathered as part of any investigation
  - A copy of any relevant documents that will be referred to at the review – including from Stage 1
  - A copy of any relevant witness statements as appropriate.
3. As outlined in para 7.1.4, an employee may bring a companion (workplace colleague or trade union representative) to any formal capability review or appeal under this Policy. An HR Adviser will also be present to take notes and provide procedural advice.
4. The employee must inform the line manager immediately if either they or their companion cannot attend. In exceptional circumstances the review will be rearranged. However, the employee must make every effort to attend the hearing and failure to attend without good reason will normally result in the line manager taking a decision in the absence of the employee.
5. The Line Manager will present facts and evidence that illustrate the concerns regarding the employee's capability.
6. The employee will have opportunity to offer a full explanation.
7. The review will be adjourned if the line manager needs to gather any further information or give further consideration to the matters discussed. In such circumstances, the employee will be given a reasonable opportunity to consider any new information obtained before the review is reconvened.
8. Following the meeting, the Line Manager will update and re-issue to the employee the Improvement Action Plan. The employee will be aware that if

improvement is not demonstrated, then the next stage of the Formal procedure will commence.

9. Review meetings will take place at least every 2-4 weeks to monitor and record progress.
10. The period of formal review/progression to Stage 3 will take place between 6 and 8 weeks unless otherwise agreed.
11. If the employee meets the required standard of performance during the review period, the Line Manager will inform them and no further action will be taken. However, if within the 12 month period the employee's performance is again considered unsatisfactory in the same role and there is no acceptable reason, Stage 2 of the formal procedure will be re-instigated.
12. At the end of the review period, the Line Manager may extend the period for improving performance, by up to 8 weeks, if:
  - There have been positive signs of progression and improvement
  - There are other mitigating circumstances that would justify an extension of time, eg. absence through illness, external or 3<sup>rd</sup> party factors that have hampered progress.
13. If the employee has not met the required standards or targets during the review period, the Line Manager will inform them that they will proceed to Stage 3 and this may result in their dismissal on Capability grounds.

### **7.3 Stage 3 – Formal Capability Hearing**

1. The Line Manager will advise the employee that they are required to attend a Stage 3 – Formal review of their performance.
2. The employee will be given at least 5 working days written notice of the proposed review within which the line manager will set out their concerns over the employee's performance, the reasons for those concerns and that a possible outcome could be dismissal if it is decided after the hearing that their performance has been unsatisfactory. The line manager will also include:
  - A summary of the relevant information gathered as part of any investigation
  - A copy of any relevant documents that will be referred to at the review – including from Stage 1 and Stage 2
  - A copy of any relevant witness statements as appropriate.
3. As outlined in para 7.1.4, an employee may bring a companion (workplace colleague or trade union representative) to any formal capability review or appeal under this Policy. An HR Adviser will also be present to take notes and provide procedural advice.
4. The employee must inform the line manager immediately if either they or their companion cannot attend. In exceptional circumstances the review will be rearranged. However, the employee must make every effort to attend the

hearing and failure to attend without good reason will normally result in the line manager taking a decision in the absence of the employee.

5. The hearing will be chaired by a Head of Service who is authorised to conduct a potential dismissal. The Line Manager will present facts and evidence that demonstrates the employee's incapability and poor performance against agreed standards and targets.
6. The employee will have the opportunity to offer full explanation and present their case.
7. The Chair of the hearing will give full consideration of the evidence presented by both sides. If the Chair is satisfied that the employee has been given every opportunity to improve their performance, but the standard has still not been reached, they may dismiss the employee from the Council's employment.
8. If the Chair considers there is insufficient evidence to dismiss the employee, they may:
  - Extend the Stage 2 Improvement Action Plan and set a further review period (in exceptional cases where it is thought that a substantial improvement is likely within this timeframe).
  - Determine that the employee has met the required standard of performance and no further action will be taken. However, if within 12 months, performance is again considered unsatisfactory in the same role and there is no acceptable reason, Stage 3 of the formal procedure will be re-instigated.
9. In the event that the Chair is able to reach a decision on the day of the hearing, this will be communicated to the individual with a summary of the reasons for it. The employee will be advised in writing of the reasons for their dismissal within 7 working days of the hearing. The letter will include details of the Council's appeals procedure. In the event that it is not possible to adhere to this timeframe, the reason for the delay will be advised to the individual in writing within the 7 working day period.

## **8.0 OTHER FACTORS**

- 8.1 If an employee goes into sick leave, dependent on the reason given and the duration, the Line Manager should consider a referral to Occupational Health. If the reason for sickness absence is work related stress, it is recommended that a referral is done immediately and the employee is reminded of the Council's counselling service. If the duration becomes long term, the employee will be informed that the period of monitoring will be extended to compensate for this. It will then be appropriate to manage the employee's absence under the Absence Management Policy.

- 8.2 If an employee raises an allegation of harassment, bullying or a grievance against the manager who is leading on the capability procedure, the capability case may need to be suspended so the allegation can be investigated. Alternatively, and dependent upon the issues being raised, to enable the capability procedure to continue to be invoked, consideration can be given to allocating the case to another manager.
- 8.3 In exceptional circumstances and only with the agreement of the employee, the Head of Service may consider redeployment as an alternative to dismissal. In such circumstances the employee would not receive payment protection and this should be made known to them before they take a decision in this respect.

**A large print version of this document is available on request**



**Rutland**  
County Council

Rutland County Council  
Catmose, Oakham, Rutland LE15 6HP

01572 722 577  
[enquiries@rutland.gov.uk](mailto:enquiries@rutland.gov.uk)  
[www.rutland.gov.uk](http://www.rutland.gov.uk)