



## Capability Procedure

The Capability Procedure maybe used where there is an issue in terms of a staff member's ability to do their job. This procedure runs parallel with but is not part of the Disciplinary Policy. The Capability Procedure should be used to improve performance where the reason for underperformance is a lack of skill, inadequate training and lack of support.

If the member of staff is underperforming in their role due to carelessness, negligence or lack of effort then this should be treated as misconduct and dealt with under the disciplinary policy.

An initial meeting should take place between the employee and their line manager to establish whether the underperformance is due to lack of capability or misconduct.

Old Rayne Playgroup places great importance on maintaining levels of performance at an acceptable standard and this capability procedure provides a fair and objective process to enable managers to ensure that those standards are met in every aspect of the group's operations.

For the purpose of this Capability Procedure, capability is defined as:

Where a member of staff is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner, either due to a lack of ability, inadequate training or lack of experience. Such failings will be identified by use of the following procedures and steps taken to improve performance. Where such steps prove unsuccessful the member of staff may have their employment terminated on the grounds of incapacity.

The procedures set out in this document aim to ensure that there is:

1. A means of monitoring performance and establishing performance criteria.
2. A degree of consistency in how staff with widely differing responsibilities and duties are given opportunities to attain satisfactory levels of performance.
3. Assistance in identifying the most appropriate form(s) of support and providing that support.
4. If a member of staff fails to overcome their difficulties, any consequent action will be based on:
  - Adequate evidence that the member of staff is incapable of performing their duties satisfactorily.
  - A fair procedure.
  - The fact that the member of staff was given all reasonable assistance to overcome such failings.

### **Procedure**

#### **Stage 1 - Informal Procedure**

Where a group employee exhibits an inability to perform their duties satisfactorily, the management committee will attempt to resolve the matter informally via a meeting between

the line manager and the member of staff. The nature and date of the meeting will be recorded and a letter sent to the member of staff indicating the nature of their unsatisfactory performance and how such performance can be improved to the satisfaction of the line manager. Specific examples of the member of staff's underperformance will be provided by the line manager for the employee. The member of staff should be informed that they may be accompanied at any formal meetings by a trade union representative or work colleague.

At this meeting, the line manager will agree performance standards with the member of staff, and a time period (normally 3 months) over which improvement will be expected. They will also agree how the individual's performance will be monitored. A performance improvement plan should be documented and signed by the line manager and member of staff. Regular performance reviews will take place over the next 3 months.

If the individual's performance improves adequately over the timescale, then the process will terminate at this stage. If performance remains unsatisfactory, then the formal procedure will be invoked by the line manager as set out in stage 2.

### **Stage 2 - Formal Procedure - Information Collection**

The chairperson may call on the support of an external advisor or another member of the management committee, to undertake collecting the necessary information. They would be expected to interview the member of staff concerned and the line manager, as well as any other appropriate individuals. The member of staff should be informed that they may be accompanied at any meetings by a trade union representative or work colleague. The chairperson should not be available at this time as they may have to deal with an appeal. Another committee member should deal with this at this stage.

A written report based on evidence gained e.g. by interviews and observation of performance will be prepared by the chairperson/owner/manager. The report should be precise and specific in the observations and comments it makes and shall contain clear information on:

- areas where the member of staff is failing to perform adequately
- actions already taken by management to address these failings and whether these actions were adequate - i.e. were clear performance standards set and monitored
- whether the member of staff acknowledges a problem and shows a willingness to improve
- the impact of the individual's failings on colleagues and work output
- any other mitigating factors.

The report should be given to the member of staff concerned and to the line manager. Both may record in writing any comments on the observations contained within the report.

The Chairperson / Manager will consider the report, and may opt to take one of the following options:

- no further action
- instruct the line manager to set reasonable performance standards for the individual and monitor these for a set period of time. (*This option should be chosen if this has not previously been carried out adequately and at least three months given to improve*)
- convene a formal capability hearing to consider the matter further

### **Stage 3 - Capability Hearing**

The Chairperson / Manager will write to the member of staff informing them of the date of the hearing, attaching any relevant documentation. The letter shall contain:

- The performance deficits in sufficient detail to ensure that the member of staff fully comprehends their nature, extent and seriousness.
- The time, date and venue of the interview.
- The person who will conduct the interview, usually the Chairperson / Manager
- A statement that all employees have the right to be accompanied by a trade union representative or work colleague at any interview or hearing held under the provision of these procedures.
- At least 10 days notice of the hearing.
- The member of staff will have the right to be accompanied at any formal meeting by a trade union representative or work colleague.

A written copy of the procedure to be adhered to during the hearing should be made available to the member of staff before the hearing takes place. At the hearing, the member of staff will be given the opportunity to put forward a defence, to bring witnesses in support of their defence, to present mitigating circumstances and to make a full statement.

If the allegation is found to be justified, then a decision on the action to be taken must be made. Depending on the nature, frequency and seriousness of the allegation(s) it is expected that at this stage a First Written Warning will be given and this will be confirmed in writing. This warning will remain 'live' for a period of six months.

A letter should be sent to the member of staff confirming the decision and the reason(s) why it was made. The letter will also indicate that the member of staff's progress will continue to be monitored and how this will be carried out. A time scale for performance to improve and a review date(s) will be specified. This detail will be summarised in a performance improvement plan. Regular review meetings will be planned.

If the failings are found to be not sufficiently serious to warrant a formal warning or where there are mitigating circumstances, then monitoring should be discontinued subject to a clear indication to the member of staff that it may be reintroduced if the problem(s) reappear.

#### **Stage 4 - Second Capability Hearing**

If poor performance continues, the process set out in stage 3 should be repeated. The time scale for improvement will depend on the nature of the duties and responsibilities of the employee concerned and the seriousness of the complaint(s).

If the conclusion of the second hearing is that performance has not sufficiently improved and that there is still evidence of incapability despite support and prior warnings, a Final Written Warning should be issued. This warning will remain 'live' for a period of twelve months.

The letter confirming the decision as well as covering the points made at Stage 3, should clearly state that if an improvement is not forthcoming, the Management Committee will convene a final meeting at which it will consider terminating the contract of the member of staff involved on the grounds of capability. This detail will be summarised in a performance improvement plan. Regular review meetings will be planned.

#### **Stage 5 - Dismissal**

The appropriate committee member will conduct the third hearing the procedures outlined in Stage 3 will be followed. If there is still no improvement or insufficient improvement after a Final Written Warning, or if improvement has not been maintained for the period stated above, the member of staff will normally be dismissed with notice or pay in lieu of notice. Alternatively, at the employer's discretion alternative work elsewhere in the organisation may be offered.

## **Appeals**

A member of staff who wishes to appeal against any formal capability decision must do so within five working days of the decision. The employer will hear the appeal and decide the case as impartially as possible. Any capability warning given will be reviewed at the appeal and the result will be confirmed in writing.