

**Capability: Policy and Procedure**

SLT responsibility:	Director of Human Resources, Organisation Development & Marketing		
Applies to:	<ul style="list-style-type: none"> <li>All RNN Group Employees</li> <li>National Fluid Power Centre Employees</li> <li>RES Employees</li> </ul> <ul style="list-style-type: none"> <li>Note: Excluding Nottinghamshire Children's and Family Partnership and Aston Training</li> </ul>		
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Related documents:	<ul style="list-style-type: none"> <li>Disciplinary Policy &amp; Procedure</li> <li>Appeals Policy &amp; Procedure</li> <li>The Role of Companion Statement</li> <li>Supportive Measures Statement</li> <li>Formal Hearing Procedure</li> </ul>		
<b>EQUALITY IMPACT ASSESSMENT</b>			
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<b>DATA PROTECTION IMPACT ASSESSMENT</b>			
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## **1 Scope and Purpose**

- 1.1 This policy and procedure shall apply to all employees other than “designated senior post holders” as defined in the Group’s Articles of Governance and those newly appointed and in their probationary period.
- 1.2 The policy and procedure will be applied in accordance with the Articles of Government of the Corporation and in accordance with the Advisory, Conciliation and Arbitration Services (ACAS) Code of Practice, and the Union Recognition Agreement. It also takes into account European and UK legislation
- 1.3 This policy and procedure is designed to assist and encourage all employees to achieve and maintain acceptable standards of job performance. The aim is to ensure consistent and fair treatment for all and to assist any employee who is considered to be experiencing difficulties in performing the duties required of the post to which they were appointed. It is designed to provide employees with an opportunity to improve their performance in the workplace.
- 1.4 Early intervention when poor performance is identified should be encouraged enabling a supportive approach to be taken.
- 1.5 This policy and procedure does not form part of the employee’s contract of employment and so the right is reserved to depart from it where appropriate.

## **2 General Principles**

- 2.1 Concerns about capability may arise from a number of factors, including (but not limited to):
  - adequacy of skills and/or knowledge and expertise
  - lack of proficiency and ability to perform duties
  - inability to adapt to changes in the nature and allocation of work
  - inability to work to required standards
  - long-term absence / health problems resulting in intolerable time off work
- 2.2 A key feature of lack of capability is that it may not be the employee’s fault. It may be that the employee is making their best effort to perform in the role but is still not meeting the expected standards.
- 2.3 If the concern is related to poor health, then RNN Group will consider how the employee might be supported via the Groups Health and Wellbeing strategy. The Sickness Absence Policy should be referred to for initial management of a long-term absence case. This Policy becomes relevant where continued long-term absence from work due to ill health leads to concerns over capability.
- 2.4 Concerns about capability should not be confused with disability. Where employees become disabled during their employment, the capability process should only take place when all reasonable adjustments have been considered in line with the Equality Act 2010 as explained in the Sickness Absence Policy. Further guidance on the Act should be sought from the Human Resources Department.
- 2.5 It is not a capability issue where an employee is capable of carrying out their role but chooses not to or declines professional development essential for maintaining the agreed standard of performance.
- 2.6 All employees have the right to be accompanied at formal capability stages by a trade union representative or work colleague of their choice. (Please refer to the role of companion procedure for further details).

- 2.7 Although normal capability standards will apply to employed trade union representatives, no formal capability action should be taken until the circumstances of the case have been discussed with a trade union official.
- 2.8 All employees - have responsibility to perform duties to an acceptable standard. Employees are responsible for bringing to the attention of their Line Manager or HR as soon as possible, any work-related problems that may affect their performance.
- 2.9 Line Managers - are responsible for offering adequate support. Managers should take action at the earliest opportunity if performance is falling below the required standard. Line managers should raise issues of concern without undue delay and fairly and promptly. Line managers should consult HR when considering taking formal action.
- 2.10 HR Department - It is the role of HR to advise and assist Line Managers to ensure fairness and consistency.
- 2.11 All information at any stage of this policy and procedure, whether written or verbal, must be treated as confidential information by all parties, unless agreement to vary this is reached between the relevant Union(s) and the individual concerned.

### **3 Capability Stages**

There are different stages to the capability process at informal and formal level.

#### **3.1 Informal Stage**

- 3.1.1 Initial Informal Discussion - As soon as a concern is identified by either the Line Manager or the employee, the issue should be discussed between the employee and their Line Manager. In these circumstances, both parties should have every opportunity to discuss the concern, to make any comments and to record them if desired.

The meeting should be informal, constructive and supportive to allow the employee an opportunity to contribute and for the Line Manager to determine whether there are any factors which may be contributing to the poor performance.

After this meeting any relevant steps to support the employee should be offered and a period of time should be allowed to assess if the performance improves. An improvement plan will be agreed in order that objectives are clear.

In cases of long-term absence / health problems this informal stage will be the record of the return to work meeting.

Most areas for concern can generally be dealt with through informal discussions and support.

- 3.1.2 Informal Capability Meeting - If the concern is not resolved by this initial discussion and performance concerns remain after a reasonable period of time has lapsed, an informal a capability meeting will occur.

This time the Line Manager should be clear to the employee that they are now at the stage of informal capability and set out a written improvement plan to include:

- The specific performance concerns
- Realistic targets / objectives for performance improvement
- Timescales for achievement and review
- How the improvement will be achieved
- Any support to be offered to improve, this could include, but not restricted to: further training to facilitate improvement; variance and monitoring of workload as required; supervision arrangements necessary to monitor performance.

A copy of the improvement plan should be provided to the employee and for HR file. In cases of long-term absence / health problems this informal stage will be notes from the health and wellbeing meeting.

The meeting should provide the employee with an opportunity to discuss and potentially challenge the issues raised and to put forward any pertinent facts or mitigating circumstances.

It is anticipated that in the vast majority of cases, no further action, other than normal follow-up will be necessary. Employees should be advised however, that if necessary improvements are not made in agreed timescales or a further lapse of performance occurs, further action may be taken at the first formal stage as outlined below.

If during the informal meeting it becomes apparent that the informal capability process may be not sufficient i.e. misconduct or serious negligence has occurred, the Line Manager should end the meeting, explaining why to the employee. The Line Manager should then discuss with HR if the disciplinary process should commence.

### **3.2 First Formal Stage**

- 3.2.1 Where the levels of improvement agreed at the Informal Stage are not met, a formal capability hearing should take place to discuss performance. This hearing constitutes the date of entry into the formal process.
- 3.2.2 At least 5 working days before the hearing, the employee will be informed, in writing, of the details of the capability hearing, along with any evidence to be discussed at the hearing.
- 3.2.3 The employee will have the right to be accompanied by a Trade Union representative or workplace colleague of their choice.
- 3.2.4 If the chosen representative of the employee is unavailable on the date of the hearing, the employee may delay the date of that hearing once up to 5 working days to enable the chosen representative to attend. This is, however, negotiable under extenuating circumstances, for example if the representative is unavailable due to annual leave.
- 3.2.5 Any supportive measures required will already have been requested and organised as per the supportive measures statement (if applicable) in order to enable the employee to participate effectively. The Chair will confirm this at the start of the hearing.
- 3.2.6 Any other documentation the employee intends to refer to at the hearing should be exchanged at least 2 working days before such hearing.
- 3.2.7 At the capability hearing, the employee will be given an opportunity to their explanation of relevant factors (see formal hearing guidance for details of format).
- 3.2.8 In cases of long-term absence, the hearing will look to identify the following:
  - Is the employee able to return to work? If so, when?
  - Can any reasonable adjustments be made to facilitate the return (as referred to in the sickness absence policy)?
  - What adjustments have been considered?
  - Is redeployment an option?
  - What future treatment is envisaged?
- 3.2.9 If the employee fails, without good reason, to attend a capability hearing or where the employee fails to attend a hearing after it has been re-arranged, RNN Group may conduct the hearing in the employee's absence. Prior correspondence will indicate that the

hearing may go ahead in the employee's absence should they fail to attend and a decision made in their absence.

3.2.10 Outcomes will usually be notified verbally to the employee within 5 working days and in writing within 10 working days.

### **3.3 Second Formal Stage**

3.3.1 Where the levels of improvement agreed at the first formal stage are not met or maintained, after the review period it should be followed by a further formal review hearing (the second formal hearing). This would be a repeat of the actions set out above.

### **3.4 Third Formal / Dismissal Stage**

3.4.1 Where the levels of improvement agreed at the second formal stage are not met or maintained, or if no offer of voluntary redeployment is made, or one is not accepted after the review period it should be followed by a further formal review hearing (the third formal hearing). This would be a repeat of the actions set out at the first formal stage above.

3.4.2 The hearing will be chaired by a member of the senior management team who has not already been involved in the case. The chair should explore with the Line Manager and HR the possibility of voluntary redeployment, subject to affordability and offset by the likely timeframe involved in working through the full procedure. The post does not have to be on the same scale but any offer should be made in writing, explaining why it is being made and the consequences of refusing it. The employee should be given a reasonable amount of time to consider the offer and be advised to discuss it with their representative.

3.4.3 In cases of long-term absence / health problems the chair may adjourn the decision where further occupational health information may be required to form a decision or a return date in the near future has been indicated. If the employee does not return at this point, then the formal hearing will reconvene. Ill Health retirement will also be considered (where relevant) at this point.

### **3.5 Appeal Stage**

3.5.1 If the employee is not satisfied with the outcome of a capability hearing, they may appeal. Any such appeal must be submitted in writing, setting out the full grounds for the appeal, and sent to the HR Director, OD & Marketing within 8 working days of receipt of the capability decision.

3.5.2 The Appeal Policy will then will be followed.

## **4 Notice of Improvements / Sanctions**

It is possible that the outcome determines that no formal action should be taken. If during the formal hearing it has been established that there are mitigating circumstances an extended period of review may be offered, however it is anticipated that this would be rare.

### **4.1 Formal Notice of Improvement – 9 month's duration (1<sup>st</sup> formal stage)**

4.1.1 May be given if after the review there are no mitigating circumstances, or circumstances where improvement can be achieved quickly, a formal notice of improvement should be issued.

4.1.2 It will give the reason, the improvement required and the time limit within which such improvement must be achieved.

- 4.1.3 It will also state that, if improvement is not achieved and maintained during a specified period, further formal action will be considered.
- 4.1.4 Any specified objectives should be monitored and assessment needs to continue for a further reasonable timescale as agreed, depending on the individual situation and in proportion to the level of seriousness of the performance difficulty.

#### **4.2 Final Notice of Improvement - 12 months duration (2<sup>nd</sup> formal stage)**

- 4.2.1 May be given if the employee fails to comply with a formal notice of improvement.
- 4.2.2 It will give the reason, the improvement required and the time limit within which such improvement must be achieved.
- 4.2.3 It will also state that, if improvement is not achieved and maintained during a specified period, it may lead to the consideration of the termination of employment.
- 4.2.4 The letter should outline discussion about voluntary redeployment. The post does not have to be on the same scale but any offer should be made in writing, explaining why it is being made and the consequences of refusing it. The employee should be given a reasonable amount of time to consider the offer and be advised to discuss it with their representative.

**Any level of written notice of improvement** will advise the employee of the right of appeal in accordance with the Appeals Policy.

A copy will be placed on the employees HR file, for the time period specified, then it will be considered spent and shall be removed from the HR record at that point.

#### **4.3 Dismissal (3<sup>rd</sup> formal stage)**

- 4.3.1 The Chair, (having had regard for mitigating factors presented by the employee, representative of Trade Union representative or workplace colleague) may give notice of dismissal to the employee if the employee fails to comply with a final written warning; because this was not achieved or not maintained within the warning period.
- 4.3.2 After the capability hearing any notice of dismissal will be in writing and will specify the reasons for dismissal, the date on which the employment will end with the appropriate notice and the right of appeal against the dismissal in accordance with the Appeals Policy.

### **5 Other Circumstances**

- 5.1 In the vast majority of cases, it should be possible by using any or all of the measures outlined in the supportive measures statement (see document) to conduct a fair capability process in which the employee fully participates.
- 5.2 RNN Group aims to ensure that all matters relating to capability action are dealt with fairly and promptly and will, wherever possible, follow the principles set out in this policy and procedure.
- 5.3 If a grievance is raised during the capability process, it will be dealt with under the grievance procedure.