



**Royston Town Council  
Capability Procedure**

**Adopted by Full Council: 19<sup>th</sup> October 2020 - Minute number 80/21**

**1. Purpose and Scope**

**1.1** The primary aim of this Capability Procedure is to provide a framework in which Royston Town Council can work with members of staff to maintain satisfactory performance standards and as necessary encourage improvement.

**1.2** Royston Town Council recognises the differences between capability and misconduct, which is normally a deliberate failure on the part of the member of staff to observe the Council's rules and standards, and in which case the Council will use the Disciplinary Procedure. A capability case is where the member of staff appears incapable and for whatever reasons is unable to perform to the standard required. In this situation, the Council should use this Capability Procedure to try to remedy matters and to improve performance.

**1.3** Royston Town Council recognises that during employment a member of staff's capability to carry out their duties may deteriorate for several personal or organisational reasons or when their job changes over a period of time and they fail to keep pace with the changes or their circumstances or health change and they can no longer cope with the work.

**1.4** The Capability Procedure may also be used if the Council is concerned about a member of staff's attendance record or if they are experiencing long term absence from work due to illness or injury and in such circumstances particular consideration will be given if the work difficulties are associated with a permanent disability.

**2. Procedures**

**2.1 Informal Resolution**

**2.1.1** Minor capability issues will be dealt with informally by informal discussion between the member of staff and their Line Manager and/or the Town Clerk with a view to clarifying the required work standards and the level of performance or reliability expected of the member of staff, identifying any areas of concern, establishing the likely causes of poor performance, identifying any further training or supervision needs, setting targets for improvement and agreeing a time scale for review.

**2.2 Formal Procedure - General**

**2.2.1** In cases where informal discussion does not lead to a satisfactory improvement in performance or reliability or where the performance concerns are more serious, the following formal Capability Procedure will be followed. At all stages of the Procedure set out below an appropriate investigation will be undertaken into the allegations of poor performance and evidence obtained to justify using and/or moving through the Capability Procedure.

**2.2.2** The Council will notify the member of staff in writing of their concerns over performance or reliability and the basis for those concerns and will invite the member of staff to a capability meeting to discuss the matter which will be conducted by the Town Clerk or a designated Panel of three members of the Council particularly in the case of the Town Clerk. At all meetings as part of this Procedure the member of staff will be given the opportunity to respond to the concerns and may be accompanied, if they wish, by a work colleague or trade union official or representative of their choice. The member of staff must take all reasonable steps to attend all meetings to which they are invited.

**2.2.3** The Town Clerk or the Panel will be accompanied by another person to take notes of the meeting. An external independent third party may be engaged to advise on the implementation of any stage of this Procedure and/or assist with an investigation or capability meetings.

**2.2.4** The purpose and format of the various capability meetings include:-

- to set out the alleged performance failing and/or the required standards or targets that the Council considers the member of staff has not met;
- to present the evidence that the Council relies on to prove these failings;
- to establish the likely causes of the poor performance or reliability (including any reasons why any measures taken so far have not lead to the required improvement);
- to allow the member of staff the opportunity to respond to the allegations and explain their poor performance and offer any mitigation and to ask any relevant questions;
- to consider measures, such as additional training or supervision, to improve performance;
- if appropriate, to agree to obtain relevant external specialist advice e.g. a medical report and/or referral to an occupational health adviser;
- to set targets for improvement and/or a reasonable time scale for review;
- in a case where dismissal is possible to establish whether there are any further steps that could reasonably be taken to rectify the poor performance or reliability;
- to establish whether there is any reasonable likelihood of the required standards of performance or reliability being met within a reasonable time;
- if appropriate to discuss at the final stage of the Procedure the termination of employment where there is no any practical alternative to dismissal.

### **3. Formal Procedure Stages and Outcomes**

**3.1** The member of staff will be invited in writing to each capability meeting and following each meeting, they will be informed in writing of the decision in accordance, where appropriate, with the below range of outcomes and penalties which in every case should be reasonable and proportionate to the performance failing. The decision letter confirming the outcome should not only state, when relevant, the penalty being imposed but also notify the member of staff's right to appeal against the decision.

#### **(a) First capability meeting and first written warning**

If appropriate, at the first capability meeting the member of staff may be given a formal capability warning, setting out the areas in which they have not met the required performance standards, the targets for improvement, any measures (such as additional training or supervision) which will be taken with a view to helping to improve performance,

an appropriate time scale for review and the likely consequences of failing to improve to the required standards within the review period. The written capability warning will be live for twelve months, be issued within 5 days of the meeting and placed on the member of staff's personnel file. Subject to satisfactory performance it will be nullified and removed from the personnel file at the end of the twelve months period.

The member of staff's performance will be monitored with them during any review period set and, at the end of the review period or earlier if necessary, the Council will advise them of the outcome of such monitoring. If the Council is satisfied with the member of staff's improved performance, no further action will be taken. If, however, the Council is not satisfied with the member of staff's performance, the matter may be progressed to the next stage which would normally be a further capability meeting. If the Council feels that there has been a substantial but insufficient improvement, the review period may be extended before a decision is taken on further action.

#### **(b) Second capability meeting and final written capability warning**

Failure to improve performance in response to the first written warning will result in a further capability meeting and if appropriate a final written capability warning being issued. This will again set out the areas in which the member of staff has still not met the required performance standards and any targets for improvement despite any measures, such as additional training or supervision, having been taken with a view to improving performance. A time scale for further review and the likely consequences of failing to improve to the required standards within the further review period i.e. that dismissal will probably result, will be explained. The final capability written warning will be issued as above and again nullified after twelve months, subject to satisfactory performance.

The member of staff's performance will again be monitored with them and, at the end of the review period or earlier if necessary, the Council will discuss it with the member of staff and write to advise them of the outcome. If the Council is satisfied with the member of staff's improved performance, no further action will be taken. If, however, the Council is still not satisfied with the member of staff's performance, the matter will be progressed to the next stage in accordance with one of the options set out above except that the outcome could be a final written capability warning and the situation may progress to a final capability meeting where the possibility of dismissal may be considered.

#### **(c) Final capability meeting and dismissal**

If there is still a continued failure to improve performance in response to the procedure to date the member of staff will be invited to a final capability meeting and it may lead to dismissal, with appropriate notice. Before dismissal is determined the Council will first consider redeploying the member of staff by agreement to another job, if appropriate and one is available, which is more suited to their capability. Whatever the situation a dismissal decision will only be made after a full investigation and consideration of all possible alternatives and options. If dismissal is determined, the member of staff will then be informed in writing of the reasons for dismissal, the appropriate period notice, the date on which the employment will terminate, any payments due and how they can appeal against the dismissal decision.

## **4. Appeal**

**4.1** The member of staff may appeal against any decision under this Capability Procedure, including dismissal, which must be lodged in writing within five (5) working days of the decision. Appeals should be made in writing to the Town Clerk and state the grounds for appeal.

**4.2** As soon as practicable the member of staff will be invited to attend a meeting of an Appeals Panel made up of three Members of the Council who have not been involved in the matter to that date. At the appeal meeting, the member of staff will be given the chance to outline the grounds of their appeal state, call any relevant witnesses on their behalf and will have the right to be accompanied by a work colleague or trade union representative of their choice. Following the appeal meeting, the member of staff will be informed of the appeal decision, which will be final, and the reasons for it, in writing and normally within five (5) working days of the meeting.

## **5. Medical Conditions or Disability**

**5.1** If the member of staff's lack of capability to do the job is impaired due to a medical condition or a permanent disability, the Council will obtain independent medical or other specialist occupational health advice before reaching any decision as part of this Procedure. The member of staff will be asked for their consent for the Council (or an independent occupational health adviser) to approach their own medical adviser for access to their medical records. The member of staff has the right to refuse the Council access to such records but the Council will then only be able to make decisions based on the available information.

**5.2** When appropriate, the Council will give consideration to whether the unsatisfactory performance is related to a permanent disability and, if so, whether there are any reasonable adjustments that could be made to the requirements of the job or other aspects of the working arrangements.

**5.3** If appropriate the Council will consider, in agreement with the member of staff, making any reasonable and feasible adjustments to the member of staff's job role, working environment, hours and times of work and any other practical aids and adaptations to assist them to carry out the job role and/or to return to work.

**5.3** If despite these measures the member of staff's work performance continues to be below acceptable standards then the Council will follow the Procedure through to a possible dismissal on the grounds of incapacity to carry out the job but this will only be done as a last resort and after all other options have been explored with the member of staff and always in the light of the medical advice received.

## **6. Review**

**6.1** The Capability Procedure is non-contractual and does not form part of any member of staff's contract of employment.

**6.2** The Capability Procedure will be reviewed periodically and as appropriate to assess its effectiveness or if required by law. Any appropriate changes may then be implemented following consultation with all members of staff.

## **7. Approval**

**7.1** This Procedure was adopted by Royston Town Council at the Full Council meeting held on 19<sup>th</sup> October 2020.