



CAPABILITY:
MANAGING POOR PERFORMANCE
PROCEDURE FOR SCHOOLS
(Non-Teaching Staff)

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Chapter 1

1. SECTION 1: PURPOSE, SCOPE AND PRINCIPLES

- 1.1. This section sets out the reason for the procedure, describes who is covered by it and the principle of natural justice contained in it.

Purpose

- 1.2. To provide a fair and consistent method of dealing with a continuous shortfall in the performance of employees, where informal advice and guidance in supervision meetings have failed to achieve the desired improvement.
- 1.3. To help clarify standards of performance to be specified.
- 1.4. To meet statutory requirements.

Scope

Employees covered by the procedure:

- 1.5 ALL employees of [insert name of school] School except staff on teaching contracts for whom a separate procedure applies.
- 1.6 The procedure does not apply to matters relating to an employee's conduct, capability (as assessed by reference to health or other physical or mental quality), or to employees within their probationary periods to whom the probation procedure applies.

Principles

- 1.7 The following important principles are encompassed within this procedure:
- a) this procedure, based on established case law, has been agreed between the School and the recognised trade unions;
 - b) the procedure will not contradict any current or future national agreement;
 - c) employees will be informed of the School's procedure, in particular through the induction process. Details of where a copy of this procedure can be accessed by staff employed at the School will be set out in the employee's main statement of terms and conditions of employment.
 - d) employees will be informed of the standards expected of them;
 - e) employees will be given an opportunity to state their case before any decision is reached
 - f) the informal process will have been exhausted before the procedure is initiated;
 - g) an employee may be accompanied and represented by a trade union representative or a person of their choice;
 - h) there will be a right of appeal against formal action taken.

Chapter 2 2. SECTION 2: PREAMBLE - GENERAL PRINCIPLES

Authority to take action in cases of poor performance

2.1 Every manager or team leader is authorised to give verbal warnings to employees within the scope of their responsibility in the case of poor performance. More serious action to remedy poor performance may only be taken by Designated Officers.

Designated Officers

2.2 Designated Officers shall be responsible for ensuring that the capability procedure is properly followed and, in particular, shall have the right to hold formal capability hearings and take action. In addition, a Designated Officer has the ability to recommend that an employee be dismissed. The consideration of such a recommendation can only be made by the Governing Body or sub Committee of the Governing Body established for this purpose (see section below relating to dismissal).

2.3 It is a matter for the Governing Body to determine which managers of the Schools shall be 'designated officers'. In all cases this shall be the Head teacher, but may also include other senior managers of the School if the Governing Body so decides.

2.4 It is expected that all Designated officers will have had appropriate training in dealing with capability. Where a Designated Officer has not yet had training, then advice and guidance in following this procedure must be sought from the Education and Children's Services HR Partner.

Time Limits

2.5
attend a meeting under this procedure on a day when they are not contracted to work. These limits may be varied by agreement between the parties and such agreement shall not be unreasonable withheld by either side.

Where a period for improved performance (including attendance) is set, this period shall have regard for the circumstances of the individual's contract of employment and the pattern and frequency of days on which the employee is contracted to work. Such periods for improvement must be reasonable in all the circumstances of the case.

Timescales may be varied by agreement between the parties, and a request for deferment by either side will not be unreasonably refused.

Trade Union Representatives

2.6 Where the capability procedure is to be applied to accredited trades union

representatives (stewards), no formal action will be taken until the case has been discussed with a full-time official of the recognised trade union. The Education and Children's Services HR Partner must be informed of these cases and the appropriate Designated Officer must ensure the trade union official is informed as quickly as possible.

Verbal Reprimands and Verbal Warnings

- 2.7 Any manager or team leader with supervisory responsibility may have occasion to reprimand an employee verbally in the normal course of managing performance. A verbal **warning** may be given, which would need to be authorised by a Designated Officer and may be recorded as part of the supervision record or in a confidential work diary. The employee will be informed that further unsatisfactory performance following a verbal warning would leave them open to action being taken under the capability procedure.
- 2.8 In all cases it is important that the team leader or manager clarifies the areas where performance is unsatisfactory and what is expected.
- 2.9 There will be no right of appeal against verbal warnings as they are given outside the formal procedure. Similarly, although an employee **may** be given the opportunity to be accompanied or represented when a verbal warning is given this is not an **entitlement** at this stage under this procedure. However, the employee should be advised that s/he may seek advice from his/her trade union representative. The employee may record a response to be kept with the record of the verbal warning. Verbal warnings will not be given as a result of a formal capability hearing.

Capability Records

- 2.10 Records of action under this procedure will be kept on the employee's personal file. Managers must ensure that records of action taken under this procedure are reviewed in the light of the employee's subsequent performance. Records of action will be automatically disregarded and removed (i.e. not counted in any future action under this procedure) and expunged from the personal file after 15 months satisfactory attendance, unless already removed on review. Records will not be kept for more than 15 months before being disregarded and expunged from the file, except in exceptional circumstances when the records may be retained. In such cases the employee must be informed and told the reason.
- 2.11 The records will be kept under confidential conditions by the Education and Children's Services Directorate HR team. Employees can examine their own records on request.

Refusal to take part in the procedure

- 2.12 If an employee refuses to take part in the capability procedure, the School will write explaining that capability action may have to be taken in his/her absence,

based on the information available.

- 2.13 It is in the interest of all parties involved in any allegation of unsatisfactory performance to co-operate as fully as they can, to ensure the process is completed as quickly and fairly as possible.

Role of HR Advisor

- 2.14 Personnel help is available at all times and managers are encouraged to seek it, especially in more complex cases. Designated Officers will decide whether they wish to be accompanied at a hearing by an HR Advisor. However, for cases involving final written warnings and recommendations for dismissal, or where the Designated Officer has not received the appropriate training, an HR Advisor must be present. Similarly, hearings and appeals before the Governing Body will also require an HR Advisor to be present (see below).
- 2.15 It is important to note that the HR Advisor will attend any capability or appeal hearing in an advisory capacity only. All capability or appeal decisions remain the responsibility of the Designated Officer or Governing Body. The HR Advisor is there to assist the Designated Officer or the Governing Body to deal with the hearing in a proper manner and to advise on matters such as employment law, precedent and good HR practice and procedure.

Alternative Employment

- 2.16 Offers of alternative employment should include a trial period, normally of 4 weeks. The appropriate manager should also identify and arrange with the employee any necessary training. If an employee accepts an offer of alternative employment, under this procedure, at a lower grade, there will be no entitlement to protection at their former grade.
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- 3.1 Managers/team leaders and employees should make every effort to deal with shortfalls in performance during regular supervisory meetings, exploring the reasons and agreeing solutions. Managers/team leaders must be satisfied that employees are clear about what is expected of them and that they have the necessary support, equipment and training to do their jobs to the required standards.

As jobs evolve over time, it is important for managers/team leaders to ensure that any new or changed expectations are reasonable and are discussed with employees, and any training and support given, before taking action under this procedure.

- 3.2 If the shortfall develops into a problem, which cannot be resolved through supervision meetings, the manager/team leader will discuss the situation with

the employee at a separate meeting. The manager/team leader will explain that the problem is now more serious but that it is still being addressed informally. The manager/team leader and employee should make every effort to discover the root causes. They should explore all appropriate solutions, which could include:

- ❑ Training needs and the way that training is delivered
- ❑ Supervisory or team support
- ❑ Changes to working arrangements where the problem may be outside work, e.g. hours of work and domestic commitments
- ❑ The way work instructions are given
- ❑ Monitored achievable targets

3.3 They should agree a review period, how subsequent performance will be monitored, and how they will ensure that follow up action is achieved. The manager/team leader will decide whether to give a verbal reprimand or to ask the Designated Officer to authorise a verbal warning (see paragraphs on Verbal Reprimands and Verbal Warnings). If a verbal warning is given, the manager/team leader should let the employee know that if there is no improvement, at the end of the review period, s/he may have to initiate the School's Capability (Poor Performance) Procedure. The warning will be recorded either as part of the supervision record or in a confidential work diary.

3.4 Subsequent performance should be monitored and assessed as objectively as possible and as frequently as is appropriate, bearing in mind the nature of the employee's duties and the length of time which would be reasonable to allow for improvement.

4. SECTION 4: THE CAPABILITY PROCEDURE

Stage 1

4.1 If, having explored all of the appropriate options, the employee is unable to achieve and maintain the required standard of performance, the manager/team leader should refer the matter to the appropriate Designated Officer. The manager/team leader should remind the employee of his/her right to be accompanied and represented by a trade union or other representative of his/her choice. S/he will meet with the employee, their representative and the supervisor, as soon as possible, to investigate the matter. This will include the reasons for the shortfall and the steps taken so far to remedy the situation. The Designated Officer shall then decide whether to invoke stage 2 of the procedure.

4.2 In the event that there is no intermediate manager/team leader for the employee (ie the Designated Officer is the 'first line' manager), then the

Designated Officer shall still conduct the assessment described above before deciding whether to refer the matter to Stage 2 of this Procedure.

- 4.3 If the Designated Officer feels that it is not appropriate to invoke stage 2 of the procedure, s/he can decide to agree a further review period and the necessary support to improve performance. S/he must make it clear that a failure to improve could result in action being taken under the capability procedure.

Stage 2

- 4.4 The Designated Officer will arrange a formal hearing, giving the employee at least 5 working days notice. The letter should include the following details:
- ❑ That the meeting is within the capability procedure
 - ❑ The nature and details of the poor performance
 - ❑ The date, time and location of the meeting
 - ❑ The employee's rights to representation
 - ❑ Identity of the person conducting the hearing and any personnel advisor
 - ❑ Any relevant documentation
 - ❑ A copy of the capability procedure
- 4.5 At the hearing, the Designated Officer should tell the employee precisely where and how their performance falls short of expectations, reminding her/him of the steps taken already to encourage improvement. The employee will then have the opportunity to offer an explanation. If the Designated Officer does not accept the employee's explanation, s/he will give a formal written warning. The Designated Officer must confirm the warning in writing within 5 working days of the hearing.
- 4.6 The letter should include:
- ❑ The decision and the reason for it
 - ❑ The standards and guidelines for improvement and the period over which the improvement must be achieved
 - ❑ How performance will be monitored
 - ❑ Any rights of appeal, to whom the appeal should be made and within what time scale
 - ❑ Reference to the fact that if performance does not improve, then the question of continued employment may be considered
- 4.7 Subsequent performance should be assessed as objectively and as frequently as appropriate, particularly bearing in mind the nature of the duties and the length of time that could be considered reasonable for the employee to improve performance.
- 4.8 If sufficient improvement is made, the employee should be seen and told that, provided it continues no further steps will be taken. Any return to inadequate standards will, however, result in the procedure continuing from the point previously reached, if they occur within the review period.

Stage 3

- 4.9 If insufficient improvement is made, the Designated Officer should arrange a formal hearing as set out above. If the employee's explanation is not accepted, the Designated Officer will consider:
- ❑ Whether alternative employment is available and, if so, whether it can be offered to the employee
 - ❑ If so, make the offer in writing, giving the employee a maximum of 5 working days to consider the offer; if accepted, arrange a four week trial period.
 - ❑ If it is impracticable to offer alternative employment, or the employee has rejected the offer, a final period to improve work performance will be given.
- 4.10 This final warning will be confirmed in writing. The letter should include:
- ❑ The decision and the reason for it
 - ❑ The standards and guidelines for improvement and the period over which the improvement must be achieved
 - ❑ How performance will be monitored
 - ❑ Any rights of appeal, to whom the appeal should be made and within what time scale
 - ❑ Reference to the fact that if performance does not improve, then the question of dismissal with notice will be considered.
- 4.11 If sufficient improvement is made, the employee should be seen and told that, provided it continues, no further steps will be taken. Any return to inadequate standards will, however, result in the procedure continuing from the point previously reached, if they occur within the review period.

Stage 4

- 4.12 If the employee fails to improve performance within the allotted time period, the case will be referred to the Governing Body or sub committee of the Governing Body authorised to deal with such matters. The referral will be made through the clerk to the Governing Body who will arrange a hearing as set out above. If the employee's explanation is not accepted, the Governing Body will consider: -
- ❑ Whether alternative employment is available and, if so, whether it can be offered to the employee. This should take into account any previous offer of employment.
 - ❑ If so, make the offer in writing giving the employee a maximum of 5 working days to consider the offer; if accepted, arrange a four week trial period
 - ❑ If it is impracticable to offer alternative employment, or if the employee has rejected the offer, whether dismissal with notice shall be recommended to the Local Education Authority.
- 4.13 The decision will be confirmed in writing and the employee will be advised of his/her right of appeal against the decision to dismiss.
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5. SECTION 5: THE APPEAL PROCESS

Appeal Arrangements

- 5.1 Appeals can be made against written, final written warnings and dismissal. An appeal must be made in writing and addressed to the Clerk of the Governing Body, within 5 working days of the decision of the capability hearing. The letter requesting an appeal hearing must state clearly and in full the grounds on which the appeal is being requested, in relation to the findings and decisions confirmed in writing to the employee following the capability hearing.
- 5.2 Employees have the right to be accompanied and represented at any stage in the appeal process by a Trades Union Representative or other representative of their choice. The Appeal Panel hearing the appeal can be advised by an HR Advisor, who will act in an advisory capacity only. The appeal decision will rest with the Appeal Panel.
- 5.3 The Clerk to the Governing Body will arrange the appeal, which will be heard by members of the Governing Body not previously involved in the original decision to recommend dismissal to the LEA. The employee will be notified, within 5 working days of receipt of the appeal request, of the date and arrangements for the appeal, which will be heard as soon as is reasonably practicable.
- 5.4 The principle of any appeal is that it should be heard by a different membership of the Governing Body than at the original hearing.
- 5.5 The appeal hearing will not be a re-hearing of the whole case. However, if the employee contends that the earlier proceedings were fundamentally flawed, the Appeals Panel will have discretion to arrange for a re-hearing of the case at appeal stage. It will be for the employee and/or the trades union representative to state clearly why they believe the proceedings were fundamentally flawed if this is alleged.
- 5.6 The Designated Officer who made the original recommendation to dismiss the employee should present the response to the appeal.
- 5.7 The employee and management side must supply each other with any relevant documents not less than 3 days before the appeal date. New documents will not normally be admissible unless new information has come to light, which was not available at the original hearing. In exceptional circumstances, genuinely new evidence may become available, which the Appeals Panel may accept at the hearing.

Grounds of Appeal

- 5.8 The grounds of appeal may constitute one or more of the following:
 - a. The procedure - e.g. the procedure was not followed and a procedural failure affected the decision

- b. The decision - e.g. the Designated Officer did not come to the right conclusion because the evidence did not support a finding of incapability and recommendation to dismiss.
- c. The penalty- e.g. the penalty was too harsh taking into account the level of poor performance, the mitigating circumstances and/or the employee's previous service.

(Separate standard format for all Governing Body Hearings and Appeal Hearings are to be followed)

The contents and operation of this procedure will be reviewed through the Education and Children's Services Directorate Joint Forum to reflect comments from the Governing Body. The first review will be undertaken one year after formal recommendation to schools. [Insert date here].