Kings Road CPS

SCHOOLS MODEL PROCEDURE

MANAGING CAPABILITY - SUPPORT STAFF

PRODUCED BY HUMAN RESOURCES, TRAFFORD COUNCIL

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INTRODUCTION

We are committed to supporting the development and improvement of individual performance to contribute to the school's objectives. We aim to promote and maintain a culture which encourages and empowers employees to manage and improve their own performance. We will support employees by providing clarity on the standards expected and providing the necessary training and development to help them to achieve the required standards.

We recognise that there are occasions when an employee's performance, for whatever reason, fails to meet the required standard. Performance concerns should initially be addressed informally. In most cases further training, support, coaching, tools/resources, improved communication or working relations will resolve the performance issue.

This procedure is designed to ensure that cases of under-performance are dealt with fairly and consistently, with the prime objective of improving performance to the required standard.

The procedure set out in this procedure is staged to provide a framework for managers and employees to address issues of under-performance however, this does not mean that each stage must apply regardless of the severity of the performance shortfall. In exceptional circumstances, if the underperformance is so extreme that it poses significant risk e.g., endangers health and safety, the procedure may start at any stage, including the final stage.

Nothing in this procedure is intended to prevent the normal process of management and supervision, whereby managers allocate work, monitor performance, give feedback on areas for improvement and highlight work done well.

SCOPE

This procedure applies to all support staff in schools who have completed their probationary period. Separate procedures exist for employees still in their probationary period, and for Teachers.

This procedure should not be used to address concerns regarding:

- Poor attendance because of ill-health. Such concerns should be addressed under the Attendance Management Procedure
- Conduct. Conduct matters relate to deliberate failure on the part of the employee to perform to the required standards of which they are capable, for example, carelessness, negligence or lack of effort which is under the employees' control. Such concerns should be addressed under the Disciplinary Procedure.

PRINCIPLES

- Capability issues will be dealt with in a sensitive and constructive manner with clear outcomes identified and communication at all stages.

- Managers will clearly communicate the standards of work required and identify shortfalls in performance so that employees know what is expected of them.

- When dealing with performance issues employees will be given a fair and realistic time period to improve. Additional training, support and guidance will be considered where appropriate.

- Where applicable managers will consider any reasonable adjustments required under the Equality Act, that may be impacting on the employee's performance.

- If an underlying health condition is identified as having a potential impact on performance, the employee should be referred to Occupational Health. We will aim to support any reasonable adjustments recommended by Occupational Health. Where an employee withholds consent to be referred to Occupational Health, the employee will be advised that any decisions made will be based on the available information.

- Performance improvements achieved under this procedure must be maintained. Where an employee fails to maintain the required performance standards previously demonstrated under this process, this is likely to be considered as a conduct matter and will be addressed via the Disciplinary Procedure. In exceptional circumstances the manager may return immediately to the same stage of the Capability Procedure they were previously at. It is recommended that advice from HR is sought in such circumstances.

- In implementing this procedure, we recognise the value of Trade Union representatives. Employees will be entitled to be accompanied by a Trade Union representative or work colleague at any formal meeting held under this procedure. The companion will be allowed to address the meeting to present information and confer with the employee. The companion does not, however, have the right to answer questions on the employee's behalf, address a formal meeting if the employee does not wish it, or prevent the staff involved from questioning the employee.

- Whilst all reasonable efforts will be made to support employees and help them to improve their performance, we cannot guarantee to maintain employment.

- Managers are responsible for maintaining accurate records of both informal and formal meetings, along with meeting outcomes held under this procedure for monitoring purposes. Records will be treated as confidential and kept no longer than necessary in accordance with the General Data Protection Regulations.

EQUALITY, DIVERSITY, AND INCLUSION CONSIDERATIONS

This procedure should be operated in line with the School's Equality and Diversity and Inclusion principles and the Equality Act.

We are committed to ensuring that no-one is discriminated against, disadvantaged or given preference, through membership of any particular group, with particular regard given to the protected characteristics of age; disability; gender reassignment; race; religion or belief; sex; sexual orientation; marriage and civil partnership, and pregnancy and maternity. This procedure will be applied fairly to all employees irrespective of their background or membership of a particular group.

Where an employee has a disability, reasonable adjustments should be considered as appropriate.

THE INFORMAL STAGE – HIGHLIGHTING CONCERNS

Performance concerns should be discussed with the employee as and when they arise in a supportive manner via the school's normal supervision and management process. If such discussions do not appear to be resolving the performance concerns, the manager should arrange an informal meeting with the employee to discuss the concerns. At the meeting the manager should:

- Clearly identify the areas of performance that are not considered to be satisfactory and provide specific examples.
- Clearly outline the standards of work required so that the employee understands what is expected of them.
- Provide a supportive environment and encourage the employee to disclose any problems they are experiencing which may be having an impact on their performance e.g., domestic problems, health issues or resourcing issues.
- Discuss and agree how the required improvements can be achieved e.g., training, coaching, improved communications.

- Advise the employee that their performance will be monitored over a specified period and that you will meet with them regularly to monitor progress during the period.
- Clearly outline the next steps if performance does not improve.

Unless exceptional circumstances prevail, the review period should be for a maximum of 6 weeks. Regular review meetings should be held during the monitoring period to provide ongoing feedback and support. At the end of the review period the manager should meet with the employee to confirm whether their performance is meeting the required standards.

If the required standards are met, the employee should be informed that no further action will be taken. If the required standards have not been achieved, the formal stage of this procedure should be invoked, and the employee should be notified accordingly. Before invoking the formal stage, HR advice should be sought.

During every meeting, managers should record the main points of the discussion and provide the employee with a copy of the notes.

THE FORMAL STAGE

When implementing the formal stage of this procedure the following general principles will apply.

- Employees should normally be given at least 7 calendar days' written notice of any meetings under stage 1 and 2, and at least 14 calendar days' notice under stage 3.

- The employee will have the right to be accompanied by a Trade Union representative or a work colleague. The Manager should be accompanied by a representative from HR or another manager.

- The meeting/hearing invite letters should clearly outline:

    - The performance issues to be discussed including evidence to support them.
    - The support that has already been provided to help the employee achieve the required standards.
    - The employee's right to representation.
    - Actions which may follow if the performance concerns continue including potential effects on future employment.

- Normally, the minimum period for the required improvement to be made, at each stage of the formal procedure, will be six weeks. In certain circumstances this period could be extended, for example, where improvements have been made indicating further improvement to the required standards are likely. In extreme cases where poor performance is likely to present a risk to the school, employees, pupils, parents or the school's wider community, the period given for improvement may be reduced to less than 6 weeks, but the timeframe should still allow the employee sufficient opportunity to demonstrate improvement.

STAGE 1: FORMALISING THE PERFORMANCE CONCERN(S).

The manager should invite the employee to a meeting (see general principles above). At the meeting the manager should:

- Outline the performance concerns, including examples where performance fell short of expected standards.
- Remind the employee of the standards required.
- Seek agreement with the employee that there is a shortfall in performance.
- Give the employee an opportunity to disclose any problems they are experiencing which may be impacting on their performance.
- Listen to any reasons given by the employee and be prepared to adjourn the meeting, if necessary, to investigate any points raised.
- Discuss the performance improvement plan which will need to include:
    - The performance concerns. ○ The required standards. ○ The agreed actions to meet the required standards. ○ The timescales for improvement i.e., the monitoring period.
    - The support that will be provided,e.g., training, coaching, mentoring. ○ How frequently progress will be reviewed during the monitoring period.
- Make it clear that failure to meet the required standards could result in progression to stage 2 and, in due course, may lead to dismissal.

Following the stage 1 meeting, the manager should:

- Complete the performance improvement plan.
- Issue the employee with a letter confirming the agreed actions and timescales and confirming what may happen if the required standards are not met. A copy of the performance improvement plan should be included with the letter.
- If appropriate, consider referring the employee to Occupational Health.

Stage 1 Monitoring Period

During the subsequent monitoring period the manager should meet with the employee regularly to provide feedback, discuss the employee's performance, and provide support in accordance with the performance improvement plan.

At the end of the monitoring period the manager should meet with the employee to discuss their performance and confirm whether the required standards have been achieved.

Where the **required standards have been successfully achieved,** the manager should advise the employee accordingly and advise that there will be no further action taken under the formal capability procedure. Following the meeting the manager should confirm this in writing and continue to monitor the employee's performance through the normal process of management and supervision.

Where the **required standards have not been achieved** and the performance concerns continue, the manager should advise the employee accordingly and inform them that the performance concerns will now be addressed at stage 2 as per the procedure. Managers should consult with their HR representative before progressing to stage 2.

STAGE 2 - CONTINUING POOR PERFORMANCE

The manager should invite the employee to a meeting (see general principles above). At the meeting the manager should:

- Outline the continuing performance concerns to the employee.
- Remind the employee of the standards required.
- Give the employee an opportunity to disclose any problems they are experiencing which may be having an impact on their performance.
- Listen to any reasons given by the employee and be prepared to adjourn the meeting, if necessary, to investigate any points raised.
- Discuss the final performance improvement plan which will need to include:
    - The performance concerns. ○ The required standards.
    - The agreed actions to meet the required standards. ○ The timescales for improvement i.e., the monitoring period.
    - The support that has already been provided, and any new support to be provided.
    - How frequently progress will be reviewed during the monitoring period.
- Make it clear to the employee that failure to meet the required standards may result in progression to stage 3, a Formal Capability Hearing, where a decision regarding their future employment will be taken.

Following the meeting, the manager should:

- Complete the final performance improvement plan.
- Issue the employee with a letter confirming the agreed actions and timescales. The letter should also inform the employee that failure to meet the required standards may result in progression to stage 3 of the procedure, a Formal Capability Hearing, where a decision regarding their future employment will be taken. A copy of the performance improvement plan should be included with the letter.

Stage 2 Monitoring Period

During the monitoring period the manager should meet with the employee regularly to give feedback, discuss the employee's performance, and provide support in accordance with the final performance improvement plan.

At the end of the monitoring period, the manager should meet with the employee to discuss their performance and confirm whether the required standards have been achieved.

Where the **required standards have been successfully achieved,** the manager should advise the employee accordingly and confirm that there will be no further action taken under the formal capability procedure.

Following the meeting the manager should confirm this in writing and continue to monitor the employee's performance through the normal process of management and supervision.

Where the **required standards have not been achieved** and the performance concerns continue, the manager should advise the employee accordingly and inform them the performance concerns will be addressed at stage 3 as per the procedure. Managers should consult with their HR representative before progressing to stage 3.

STAGE 3 - FORMAL CAPABILITY HEARING

The employee should be invited to a formal capability hearing (see general principles above). Prior to the hearing the employee should be given:

- Copies of any written evidence and relevant documents that will be referred to.
- Details of any witnesses to be called.
- That a decision may include termination of their contract of employment

In accordance with the school's constitution a formal capability hearing will be convened. The Chair/Panel should not have had any previous involvement in the case. It is recommended that the Chair/Panel are advised by a representative from HR. The hearing should be conducted in accordance with the procedure outlined in Appendix 1.

The Chair/Panel will consider:

- The employee's job within the school including their date of commencement, job description and training record.
- The performance standards required.
- The shortfall in performance and any associated evidence where applicable.
- Whether the required standards were achievable.
- Steps that have been taken to support the employee to meet the required standards including dates and times of meetings with copies of letters sent and notes of meetings held.
- Any explanations or statements from the employee as to the reason for the shortfall in their performance and the managers' response.

The Chair/Panel may determine either:

- No further action should be taken, or
- The employee's contract of employment will be terminated with the required period of notice.

In exceptional circumstances the Chair/Panel may:

- Determine that the employee should be given a further opportunity to improve their performance and in doing so may provide specific recommendations. Where this is the case:
    - The Chair/Panel should agree a further monitoring period which should not exceed 6 weeks and adjourn the Capability Hearing. ○ The manager should

issue the employee with a further Final Performance Improvement Plan which should include any specific recommendations of the panel.
    - The manager should meet with the employee regularly during the monitoring period to discuss their performance and provide feedback and support in accordance with the final performance improvement plan.
    - The Chair/Panel should reconvene the Stage 3 Capability Hearing at the end of the monitoring period for a final decision to be made.

- Determine that the employee may transfer to an appropriate, available vacancy within the school, where this meets the school's needs. Where an employee is transferred to an appropriate vacancy, protection of terms and conditions of employment or salary would not apply. Where this is not accepted by the employee then their contract of employment will be terminated with the required period of notice.

Unless there are exceptional circumstances, the decision of the Chair/Panel should be confirmed to the employee, in writing, within 7 calendar days of the Hearing. The employee will be advised of their right to appeal the decision taken at the Capability Hearing.

The Appeal Process

Where the employee wishes to exercise their right of appeal, they should state the grounds upon which they are appealing, in writing to the Chair of Governors, within 14 calendar days of the date of the letter confirming the decision.

The Chair of Governors will appoint an Appeal Panel which will consist of ideally 3, but not less than 2, Governors, excluding staff and parent governors, who have no prior knowledge of the case. In exceptional circumstances, Governors from another school can be included in the Capability Appeal Panel. It is recommended that a HR representative be appointed to support the Appeal.

The Appeal Hearing will be convened as soon as possible and wherever possible, within 4 calendar weeks of the date the appeal was received.

The Appeal Panel will nominate a Chair. The Chair of the Appeal Panel should normally give the employees at least 14 calendar days' written notice of the Appeal Hearing. The invite letter must:

- Inform the employee of their right to be represented at the Appeal Hearing by either a Trade Union representative or a work colleague.
- Include copies of all documents to be referred to at the hearing.
- Detail any witnesses that will be called to the meeting.

The Chair of the Appeal Panel is responsible for providing copies of all documents to be referred to at the hearing along with details of any witnesses that will be called.

Unless there have been any significant changes in circumstances affecting the case in question, the Appeal Panel will determine whether the previous decision was appropriate

given all the circumstances and evidence heard. The Appeal Panel may uphold the appeal, substitute a lesser sanction, or confirm the formal action taken. At the appeal hearing, the Appeal Panel should follow the procedure attached at Appendix 2.

Appendix 1

Stage 3 Capability Hearing
Order of Proceedings

1. The Chair will introduce those present, explain the purpose of the hearing, and the procedure to be followed.

2. The management side will present a statement of the case regarding the reasons for the employee being unable to achieve satisfactory levels of performance. Documentary evidence may be referred to and witnesses called.

3. The employee or their representative may ask the management side questions about the evidence produced and any witnesses called.

4. The employee or their representative will present their case. Witnesses may be called and evidence produced.

5. The management side may ask questions about the evidence produced by the employee and their representative and any witnesses called.

6. The Chair/Panel may ask questions at any time of either party, their representatives or any witnesses called.

7. The employee (or their representative) and the management side will have the opportunity to sum up their case, if they wish.

8. Following summing up, both parties together with their representatives will withdraw to allow the Chair/Panel to consider its decision and recommendations.

9. The Chair will recall both parties and give the outcome of the hearing and the reasons for the decision. The employee will receive written confirmation of the decision in writing within 7 calendar days of the hearing. The employee will be advised of their right to appeal.

Notes

a. If during the hearing further points emerge which require investigation; the Chair may call for an adjournment to allow the new facts to be investigated after which the hearing can be reconvened.

b. Witnesses should be called into the hearing at the point that they are required to give their evidence. When they have done so and have answered questions, they will be asked to leave the hearing.

c. Both sides can ask the Chair for an adjournment, to have a break from the proceedings.

Appendix 2

Capability Appeal Hearing
Order of Proceedings

Reference to management side in this order of proceedings means the Chair of the Stage 3 Capability Hearing:

1. The Chair of the Appeal Panel will introduce those present, explain the purpose of the hearing, and the procedure to be followed.

2. The employee or their representative will outline their grounds of appeal, present any relevant evidence and/or documentation and call any witnesses.

3. The management side may ask the employee/any witnesses the employee calls questions.

4. The Panel may ask questions at any time of either party, their representatives or any witnesses called.

5. The management side will present the management position including any relevant evidence and/or documentation and call any witnesses.

6. The employee or their representative may ask the management side and any witnesses questions about the evidence.

7. The employee, or their representative, and the management side will have the opportunity to sum up their case.

8. Following summing up, both parties together with their representatives will be asked to leave while the Appeal Panel considers its decision and recommendations.

9. The Chair of the Appeal Panel will recall both parties and give the outcome of the appeal hearing and the reasons for the decision. The employee will receive written confirmation of the decision in writing within 7 calendar days of the hearing.

Notes

a. If during the appeal hearing further points emerge which require investigation; the Chair of the Appeal Panel may call for an adjournment to allow the new facts to be investigated after which the hearing can be reconvened.

b. Witnesses should be called into the hearing at the point that they are required to give their evidence. When they have done so and have answered questions, they will be asked to leave the hearing.

c. Both sides can ask the Chair of the Appeal Panel for an adjournment, to have a break from the proceedings.