



Managing Unsatisfactory Performance / Capability Policy

Reviewed by Resources Committee: 4th October 2018

Next Review: October 2019

1. PURPOSE OF PROCEDURE

- 1.1 The purpose of this document is to assist the Governing Board, Executive Headteacher and Heads of School in understanding the procedure where it has been identified that an employee is not performing satisfactorily, to ensure that:
- appropriate support is provided to enable the employee to perform satisfactorily,
 - an agreed process is planned as soon as possible within these procedure guidelines,
 - the timescales are reasonable but specific, and
 - the planned process is followed meticulously.

2. INTRODUCTION

- 2.1 This procedure has been agreed by Westminster City Council, as the LA, after full consultation with trade unions and teachers' professional associations. It is intended to apply to all staff in schools with delegated budgets and, although it concentrates on teaching staff, can be operated for and by non-teaching staff. Alternatively, guidance notes which apply to non-teaching staff are available within the Council's Corporate Personnel Handbook and can be adopted, or adapted and adopted by governing bodies for non-teaching staff if they prefer.

In cases where the Executive Headteacher is deemed to be performing unsatisfactorily the Chair of Governors is advised to consult with the LA HR before any action is taken.

In cases where a Head of School, T&O Manager, Federation Business Manager or Assistant Head is deemed to be performing unsatisfactorily the Executive Headteacher will consult with the LA HR before any action is taken.

- 2.2 In order to provide an environment in which high quality teaching can take place, it is essential that all staff recognise the standards of performance that are expected of them and that these standards are applied reasonably and equitably.
- 2.3 Head of School / T&O Manager / Federation Business Manager have a right and duty to manage school staff and to deal promptly with minor cases of unsatisfactory performance, through immediate and continuous support, without resorting to this procedure. This procedure, including the informal and formal stages, is not intended to interfere with this right and is provided for cases which require more formal monitoring.

- 2.4 All staff have a responsibility to attain a satisfactory level of performance and should be given support and encouragement to achieve this.
- 2.5 Head of School / T&O Manager / Federation Business Manager should utilise accurate job descriptions to set standards which are to be reflected in satisfactory performance. Standards of performance provide a means of judging what is acceptable.
- 2.6 Head of School / T&O Manager / Federation Business Manager should consider whether unsatisfactory performance is occasioned by unreasonable expectations or lack of proper support and explanation.

3. SCOPE OF PROCEDURE

- 3.1 It is important to recognise the difference between misconduct and lack of competence. Wilfully refusing to perform duties satisfactorily are acts of misconduct for which the school's disciplinary procedures should be used.
- 3.2 A member of staff whose work performance is deemed unsatisfactory because of perceived lack of ability, skill or experience should be dealt with under this procedure. There may be numerous reasons why an employee's performance has fallen below a satisfactory standard. Two examples from many are given below:
 - i. a shortfall in certain skills, knowledge or competencies required to carry out duties and responsibilities;
 - ii. a lack of initiative and application with regard to work.
- 3.3 This procedure does not affect the rights of employees under the Grievance Procedure. Where individuals raise grievances during this procedure there should be no need to delay or stop the Capability Procedure. There are ample opportunities for individual employees to raise concerns at the formal meetings.
- 3.4 Where this procedure is being applied to a member of staff who is a trade union / professional association official or accredited safety representative, LA HR should be consulted.
- 3.5 At all stages of this procedure, a member of staff has the right to be accompanied and represented by a trade union, association or other representative. It is the responsibility of the Head of School / T&O Manager / Federation Business Manager to invite the member of staff to be accompanied by a friend who may be a representative of a trade union/association. It is the member of staff's responsibility to arrange representation.
- 3.6 Head of School / T&O Manager / Federation Business Manager are strongly advised to consult HR at the earliest opportunity for advice and support.

4. INFORMAL STAGE

- 4.1 In cases where a Head of School / T&O Manager / Federation Business Manager is particularly concerned about a member of staff's continuing performance, the concerns should be discussed with the individual at an early stage. It should be made clear to the member of staff that the informal stage of this procedure is being invoked, rather than an informal management discussion as described in 2.3 above. A copy of this procedure should therefore be handed to the individual.
- 4.2 Discussions will include ways of improving performance by, for example, identifying particular needs. Head of School / T&O Manager / Federation Business Manager should refer to specific examples where performance is unsatisfactory, either in terms of quality, quantity and timescales or a combination of these.
- 4.3 Head of School / T&O Manager / Federation Business Manager should devote sufficient time to investigate the problem, outline the shortcomings and give the member of staff an opportunity to provide an explanation.
- 4.4 A timescale should be agreed, sufficient to allow the member of staff to demonstrate improved performance. Its duration will depend on the individual circumstance of the case and the extent to which performance falls short of requirements.
- 4.5 At the end of the time period there should be a further meeting with the member of staff to advise as to whether or not improvement has been achieved and therefore no further action is necessary. Where guidance has failed to improve performance sufficiently, the Head of School/Manager must move to the formal stage as set out in Section 5 of this procedure.
- 4.6 The member of staff should be given the opportunity to respond in writing to the Head of School / T&O Manager / Federation Business Manager's findings to be used in the formal stage.

5. FORMAL STAGE

- 5.1 The Head of School / T&O Manager / Federation Business Manager will meet with the member of staff concerned and this meeting will be "THE DATE OF ENTRY INTO THE FORMAL PROCEDURE".
- 5.2 The Head of School / T&O Manager / Federation Business Manager should write a report to be used at the formal meeting and which should include details as follows:
 - the nature of the problem
 - whether observation will be necessary
 - the targets and performance indicators set

- the level of seriousness of the problem(s) identified
- the impact on the School/ Federation
- the information gathered as evidence of poor performance
- the nature of any counselling offered and/or taken up
- the type of support available and when.

The Head of School / T&O Manager / Federation Business Manager should explain that failure to improve could result in a Capability Hearing which could result in dismissal.

5.3 Timescales

- Clear and structured timescales must be identified and communicated. These will be determined by the seriousness of the lack of capability and will normally be no more than TWO TERMS after the date of entry into the formal procedure.
- In EXTREME CASES where the education of the pupils is jeopardised the period given for improvement will be NO MORE THAN FOUR WEEKS after the date of a formal warning. (The Head of School / T&O Manager / Federation Business Manager will have to show clear evidence that a case is extreme.)

5.4 Where practicable, every effort should be made to hold this meeting during working hours.

5.5 The Head of School / T&O Manager / Federation Business Manager should write to the member of staff giving 10 working days' notice of the meeting and include information / documentation as follows:

- the purpose of the meeting, i.e. to consider the member of staff's performance, with clear reference to where s/he has failed to reach the required standards in specified areas;
- the requirement for the member of staff to attend the meeting, giving the date, time and venue;
- who will be at the meeting, e.g. the Head of School / T&O Manager / Federation Business Manager LA HR representative, note-taker, etc.;
- a reminder of the employee's right to be accompanied and represented by a trade union / association representative or friend;
- a request that the employee confirm attendance with the Head of School/Manager and the name of the representative, if any;
- a copy of the Head of School / T&O Manager / Federation Business Manager 's written report, and

- vii. a copy of this procedure: 'Managing Employee Unsatisfactory Performance / Capability Procedure'.
- 5.6 At the meeting, the Head of School / T&O Manager / Federation Business Manager interviewing the member of staff should address the following areas:
- i. the standard of work performance required and the ways in which the current performance fails to meet the required standard;
 - ii. any comment upon the accuracy of the report and/or explanation for the unsatisfactory performance provided by the member of staff;
 - iii. how work performance might be improved by, eg suitable training, and/or management support, if practicable or appropriate;
 - iv. whether the member of staff could be placed under the direct supervision of an appropriate, responsible and experienced person, e.g. Assistant Head etc.
- 5.7 At the conclusion of the meeting, the member of staff will be informed of the following:
- i. agreed action to be taken, e.g. supervision, support or training, etc.
 - ii. arrangements to be made for the observation, monitoring and review of work-performance over a specified period, giving review dates, and pre-booking any meetings and/or appointments as necessary.
- 5.8 The Head of School / T&O Manager / Federation Business Manager will confirm the proposed action in writing and should indicate the possible outcomes should the member of staff fail to reach an acceptable standard of performance. The member of staff should countersign the letter to indicate that the contents have been received and understood, and retain a copy for personal use. (Where there is a difference of opinion the member of staff should register the view in writing.)
- 5.9 During the period established for improvement in performance, the nominated observer should make notes for future use.
- The Head of School/Manager may use an officer from the LA or an external assessor to observe and advise. Where possible, the observer should be mutually-acceptable to ensure maximum confidence.
- 5.10 If the member of staff's work performance improves to a satisfactory standard by the end of the review period, s/he should be seen by the Head of School/Manager, advised accordingly and this should be confirmed in writing.

6. FORMAL REVIEW STAGE

- 6.1 The Head of School / T&O Manager / Federation Business Manager will see the member of staff at least once midway through the timescales set to check progress (date to be confirmed at the initial meeting). If the member of staff has not shown satisfactory improvement, s/he should be reminded that failure to improve by the end of the pre-set timescales will result in a Capability Hearing.
- 6.2 At the end of the formal review stage the Head of School / T&O Manager / Federation Business Manager will give written notification to the member of staff on the outcomes of the formal review stage. If the standard of work performance has not been achieved within the time specified, the member of staff should be clearly advised that final procedures could be implemented through a Capability Hearing.
- 6.4 The member of staff shall be given the opportunity to provide any explanation.
- 6.5 The Head of School / T&O Manager / Federation Business Manager will inform the member of staff that action under the final procedures will be considered where the required standard of work performance has not been achieved within the time specified, and this action could result in dismissal from the school.
- 6.6 After the meeting, the Head of School / T&O Manager / Federation Business Manager must prepare a letter to be issued to the member of staff containing a summary of the matters discussed, decisions reached and the timescales for the Capability Hearing.
- 6.7 If, at the end of the specified formal review period, the member of staff has attained a satisfactory level of competence / performance, s/he should be seen by the Head of School / T&O Manager / Federation Business Manager and advised accordingly. This should be confirmed in writing.

7. FINAL PROCEDURES - CAPABILITY HEARING

7.1 *SUSPENSION*

- 7.2 In EXCEPTIONAL CIRCUMSTANCES it may be necessary to suspend the member of staff if it is considered that his / her continued presence in the school would have a detrimental effect on either pupils or staff. The Head of School has powers to suspend on grounds of health and safety or where the continued presence in the school may prevent the Head of School from managing the school. Suspension should not be used whilst the Capability Procedure is in operation.
- 7.3 The member of staff must be seen and informed of the decision to suspend and any conditions attached to the suspension, e.g. availability to assist with further investigation, etc. The suspended employee should be allowed access to documents held in the school by prior agreement with the Head of

School. The employee must also be permitted to contact potential witnesses with prior agreement from the Head of School.

- 7.4 Precautionary suspension shall be with full contractual pay and confirmed in writing to the member of staff with a copy to the appropriate trade union or association where known.
- 7.5 If the performance has not improved to the required standard by the end of the review period specified under the Formal Review Stage of the procedure, the Executive Headteacher must convene a Hearing to determine future employment.
- 7.6 The LA HR must be invited to the Hearing, and an invitation be extended to the union representative/friend. Consideration must be given to their availability when booking the date of the Hearing.

7.7 ***PROCEDURE PRIOR TO THE HEARING***

The Head of School / T&O Manager / Federation Business Manager, who dealt with the case at the formal review stage, shall prepare a report for the Hearing on the member of staff's work performance, the action taken under this procedure, and any temporary or limited improvement achieved.

7.8 ***NOTIFYING THE MEMBER OF STAFF OF THE CAPABILITY HEARING***

The Executive Headteacher shall write to the member of staff with the following information / documentation:

- i. the purpose of the Hearing, i.e. to consider the member of staff's work performance and alleged failure to meet required standards in specified areas, and to determine appropriate action;
- ii. the requirement to attend the Hearing, stating date, time and venue together with the names of the participants;
- iii. details of witnesses to be called by management and a request that the member of staff provide information relating to his/her witnesses before the Hearing;
- iv. that the issues may be considered in the absence of the member of staff if s/he fails to attend the Hearing without providing a satisfactory explanation;
- v. that the Chair of panel has the authority to notify the LA HR of its determination to dismiss the member of staff if such action is warranted;
- vi. the right to be accompanied and represented by a trade union, association or other representative;
- vii. a request that the member of staff confirm his/her intention of attending

the Hearing and the name of his/her representative, if any;

- viii. a copy of the report detailed at 7.7 and any other documentary evidence, and
- ix. a further copy of this procedure: 'Managing Unsatisfactory Performance / Capability Procedure'.

7.9 **DISPATCH**

Whenever practicable, the letter must be handed to the member of staff personally, delivered to the home address, or sent to that address by recorded delivery and first class post.

A copy of the letter and enclosures must be forwarded to members of the Panel and the LA HR.

The member of staff must be given as much notice as possible, and not less than 10 clear working days, of the date of the Hearing.

7.10 **DOCUMENTS**

Where management intends to use documents in evidence, copies must be supplied to the employee at the time of notification of the meeting. Where the employee intends to use documents in evidence, copies must be supplied to the Panel at least 3 working days prior to the Hearing.

Where either party intends to use a signed statement of evidence from a person not being called as a witness, a copy of that statement must be sent to the other party and the Panel in advance of the Hearing, as above.

8. **THE ORDER OF PROCEDURE AT THE CAPABILITY HEARING**

8.1 **ATTENDANCE**

The Panel, the representative from the LA HR, the note-taker, the member of staff and his/her representative, and the person presenting management's case will remain throughout the Hearing until required to withdraw.

8.2 The Panel Chair, or LA HR, will introduce all those present and outline the purpose and procedure of the Hearing. The Panel Chair will ask the member of staff, or representative, if the report on his / her competence / capability is acceptable.

8.3 i. Where the report is accepted by the member of staff, the Chair will move to section 9 of these procedures.

- ii. Where the report is not accepted by the member of staff, or representative, all stages of the procedure from paragraphs 8.4 onwards should be followed.
- 8.4 The management representative will outline the concerns about the member of staff's work performance, the actions taken under the procedure, and any temporary or limited improvement achieved.
- 8.5 The management representative may call witnesses to provide further evidence to support management's case. Witnesses shall not enter the room before being called to give evidence. Having given their evidence they should be released from the proceedings by the Panel and take no further part unless it seems likely they will need to be recalled to give further evidence
- 8.6 The member of staff, or representative, may question the management representative and any witnesses called by him/her.
- 8.7 The management representative may re-examine his/her witnesses on any matters raised by the Panel or the member of staff.
- 8.8 The member of staff, or representative, will then present his / her case and may also call any witnesses.
- 8.9 The management representative may question the member of staff, or representative, and any witnesses called by the member of staff.
- 8.10 The member of staff, or representative, may re-examine his / her witnesses on any matter raised by the management representative or the Panel.
- 8.11 i. The management representative may make a closing statement. No new evidence may be introduced.
- ii. The member of staff, or representative, may make a closing statement. No new evidence may be introduced.
- 8.12 The Panel Chair will require the management representative, the member of staff and representative to leave the room.
- 8.13 The Panel will determine whether the member of staff's work performance is satisfactory.
- 8.14 When a decision is reached, both parties will be called back into the room and informed of the decision. If the decision is that the member of staff's work performance is satisfactory, the Hearing will end.

9. PROCEDURE WHERE A MEMBER OF STAFF ACCEPTS THE REPORT, OR WHERE THE WORK PERFORMANCE IS FOUND TO BE UNSATISFACTORY

- 9.1 The management representative will give details of the member of staff's full employment record including, but not limited to, previous positions, length of service, any live disciplinary warnings, etc.
- 9.2 The member of staff, or representative, may challenge the accuracy of the details given and/or make a statement, including any statement in mitigation.
- 9.3 Both parties will then withdraw from the room.
- 9.4 The Panel will decide on what action is appropriate having due regard to the matters set out below:
 - i. the member of staff's full employment record including post, age and length of service;
 - ii. any action already taken under this procedure in respect of the member of staff;
 - iii. the need to protect the School's / Federation's interest, that other members of staff and of the residents of Westminster City Council;
 - iv. the member of staff's statement;
 - v. whether action other than dismissal is appropriate;
 - vi. whether the proposed action is reasonable in all the circumstances.
- 9.5 When a decision is reached, the parties will be recalled and informed of the action(s) to be taken, which will subsequently be confirmed in writing.
- 9.6 The actions which may be taken by the Panel include, but are not limited to, the following:
 - i. a further period in which to reach a satisfactory level of performance, any arrangements which may be necessary, e.g. training, supervision, monitoring, coupled with a warning that failure to achieve a marked and sustained improvement in performance will be reported back to the Panel who have the power to dismiss;
 - ii. transfer to another, more suitable post within the school at an equivalent or lower grade and at the rate to be applied, with a warning that failure to accept the proposed transfer will result in dismissal as the transfer is regarded as action short of dismissal;
 - iii. withholding of an experience point except in the cases of Head of School and deputy head of school. Reference should be made to any relevant provisions within the school's pay policy document and the School Teachers' Pay and Conditions Document where/when applicable;
 - iv. dismissal with notice in accordance with the contract of employment.

10. APPEALS PROCEDURE

- 10.1 A member of staff has the right of appeal to the Governing Board's Appeals Panel against a decision to transfer, demote, withhold an experience point, formal warnings or dismiss. The reasons for an appeal are:
- i. the findings of the panel on a point of fact;
 - ii. the severity of the action;
 - iii. the failure to follow procedure.
- 10.2 An appeal must be lodged in writing to the Chair of the Governor's via the school within 10 days of the panel's decision. The reasons for the appeal should be stated.
- 10.3 The appeal shall be heard as soon as practicable, but within four weeks of the appeal being lodged.
- 10.4 Normal appeals procedures shall be followed in terms of notification, right to be accompanied by a trade union representative etc.

Appendix1

