

ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

MANAGING EMPLOYEE PERFORMANCE AND CAPABILITY PROCEDURE – SCHOOL SUPPORT STAFF

Covers:

- **Principles (including impact on pay)**
- **Informal procedure**
- **Formal procedure**
- **Sanctions/formal actions**
- **Hearing**
- **Appeal**

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MANAGING EMPLOYEE PERFORMANCE AND CAPABILITY PROCEDURE – SCHOOL SUPPORT STAFF

The school seeks to provide each employee with the direction, development and support necessary to assure a productive and rewarding career.

Objectives

1.1 The objectives of this policy are to:

- improve and maintain the standard of work performance of an individual employee, through advice, coaching, guidance and support, with the emphasis on developing a series of performance improvement plans, which are mutually agreed (wherever practicable) to reach the required standards
- ensure that all employees are treated in a fair, consistent and understanding manner in relation to capability issues
- ensure that the school is a fair employer, meeting all relevant legal requirements regarding any capability related decisions it may take in relation to any employee
- support Headteachers/managers in carrying out their responsibilities for the maintenance of high standards of work performance by all employees
- contribute towards the improvement of the performance and effectiveness of the school
- help protect the school, its employees and pupils from the consequences of poor work performance

Scope

2.1 This policy applies to all employees except for those listed below:

- Employees who are still in their probationary period (see Probationary Period Policy);
- Employees who are not capable of carrying out the requirements of the job because of health issues (see managing sickness absence policy and procedure);
- Employees covered under separate TUPE arrangements;

2.2 Where application of formal action under this procedure is being considered against a Trade Union Official or Representative, the case must first be discussed with a Senior Trade Union Representative or full time Official in accordance with the ACAS Code of Practice.

Roles and Responsibilities

Both Headteachers/managers and employees have responsibilities under this procedure.

- **Human Resources (HR)** is responsible for ...
 - Ensuring employees are aware of school rules, practices and procedures and for applying the procedure in a fair and consistent manner.
 - Developing a culture where employees are supported and assisted in achieving the required performance standards.
 - Address and resolve work performance issues informally and promptly as appropriate through normal performance management meetings e.g. one-to-ones, supervisions, appraisals etc.

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- Recording the details of all meetings and ensuring that employees receive written confirmation of meeting outcomes, targets, objectives, monitoring and support arrangements. Copies should be kept on the individual's personal file.
- Presenting at formal hearings under the procedure if applicable.
- **Employees** are responsible for ...
 - A contractual responsibility to perform at a satisfactory level and are therefore expected to be committed to achieving such levels of performance.
 - To attend any meetings and hearings convened in accordance with this procedure.

Principles

- 3.1 This Procedure ensures that the school has fair and effective arrangements for dealing with work performance and capability matters.

Before employees can be expected to reach appropriate standards of job performance, the school accepts they should be provided with appropriate training, guidance and support.

- 3.2 A work performance issue may arise when an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a satisfactory manner due to capability, or as a result of misconduct. In cases of misconduct the Disciplinary Policy and Procedure should be used.

- 3.3 For the purpose of this procedure, under-performance is defined as:

“Where an employee is failing in a significant or persistent way to carry out their responsibilities or duties in a manner consistent with their Headteacher/manager’s expectations, either due to a lack of ability, inadequate training or lack of experience”.

- 3.4 In exceptional cases where a performance error or defect has serious consequences (i.e. if it results in the serious jeopardy of the health and safety or welfare of pupils or other employees) this may be considered as gross misconduct and the Disciplinary Policy and Procedure should be followed.

- 3.5 Initial identification of an employee’s failure to meet the required levels of performance often arises through normal performance management meetings i.e. one-to-ones, supervisions, appraisals. It is expected that the majority of performance related issues will be resolved promptly at this level, except where there is evidence that such an approach has proved ineffective already.

- 3.6 This procedure is designed to emphasise and encourage improvements in individual performance. The objective is to help an employee meet the required standard. It should not be viewed simply as a means of imposing sanctions.

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- 3.7 Whilst every effort will be made to help an employee improve their performance and to retain them in post, the school cannot guarantee to maintain employment if satisfactory performance is not achieved and sustained.
- 3.8 Employees have the right of appeal against any formal sanction issued.
- 3.9 Employees who have received a formal warning under this procedure during the appraisal period will not be eligible for pay progression for that appraisal cycle.

Procedure

Informal Procedure

- 4.1.1 Where an employee's performance is below the level expected, the school will attempt to resolve the matter informally via a meeting with the line manager and member of staff. At the meeting, the line manager/Headteacher will adopt a non-critical and non-threatening approach and:
 - Discuss the issue with the employee
 - Confirm to the employee the performance standard required
 - Provide examples of the areas in which performance is below standard, which can be used to highlight problems and later measure potential improvements
 - Ascertain any contributing factors affecting performance, e.g. relationships with colleagues, personal issues, insufficient training, workload, vacancies or sickness within the team etc. Where appropriate, and depending on the circumstances, a referral to Occupational Health may be made to seek guidance on any reasonable adjustments.
 - Identify possible solutions with the employee to help improve performance. This could include additional training, increased supervision and regular monitoring.
- 4.1.2 The Headteacher/manager should make a record of the discussion, draw up an agreed action plan with the employee and set a reasonable time period for the required improvement to be achieved.

The time allowed will take account of the type of work undertaken, nature of the improvements and relevant work cycles. Regular reviews should be scheduled and recorded.
- 4.1.3 A written record of the discussion including details of the agreed action plan, timescales for improvement and method of performance monitoring should be given to the employee.
- 4.1.4 At the end of the review period a meeting should be held to review progress and confirm whether or not the required improvements have been achieved.
- 4.1.5 If the employee's performance improves adequately over the timescale, then the process will terminate at this stage.
- 4.1.6 If performance remains unsatisfactory, then the formal procedure will be invoked by the Headteacher/manager as set out below.

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Formal procedure

- 4.2.1 When it becomes apparent that an informal approach to improving performance has failed, the employee should be told at the review meeting that a formal process will be entered into and that a formal meeting will follow.
- 4.2.2 The Headteacher/manager will arrange the formal meeting with the employee. Notification of the meeting will be provided, in writing, at least **5 working days** prior to the meeting and the letter should contain:
- A clear explanation of where the employee has not met the required standards at the informal stage;
 - The time, date and venue of the meeting;
 - Who will be present at the meeting;
 - A statement confirming the right to be accompanied at the meeting by a trade union representative or a work colleague of their choice.
- 4.2.3 The purpose of the formal meeting is to review performance, hear representations from the employee, consider the potential for improvement and to take such action as the manager/Headteacher decides is appropriate including whether the employee be dismissed on the grounds of capability
- 4.2.4 HR will be involved in all formal stages of the procedure in order to ensure that a fair and consistent approach is taken.
- 4.2.5 At all formal stages of the procedure, an employee will have the right to be accompanied by a trade union representative or work colleague. Should the employee wish to be accompanied, they should confirm the identity of their representative to the Headteacher/manager at least **3 days** prior to the meeting. It is the employee's responsibility to provide their representative with copies of any documentation they feel relevant.
- 4.2.6 The action to be taken under the formal procedure will depend on the nature of the specific shortcoming. In some circumstances, depending on the seriousness of the shortcoming, one or more of the stages may be omitted.

Sanctions/formal actions

- 5.1 There are 3 levels of action under the formal procedure:
- Stage 1 – first written warning
 - Stage 2 – final written warning
 - Stage 3 – dismissal following a final managing performance hearing

5.2 Stage 1

- 5.2.1 A meeting will be arranged as outlined above.

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- 5.2.2 At the meeting the employee will have the opportunity to comment on their performance assessment, provide an explanation and indicate what assistance is required to improve performance, including any reasonable adjustments to be considered.
- 5.2.3 If it is found that performance is not acceptable, a **first warning** may be given. The duration of the 'live' warning, if given, will usually be 6 months (but may be of longer duration in some circumstances).
- 5.2.4 A performance improvement plan will be agreed with the employee, together with an appropriate timescale for reaching the required performance standard, and a review date will be set.
- 5.2.5 The Headteacher/manager will send the employee a letter confirming the outcome of the meeting and the review arrangements and attach a copy of the meeting notes and improvement plan. The letter will also inform the employee of the possible consequences of failure to reach the satisfactory performance standards.

5.3. Stage 1 Review

- 5.3.1 A meeting will be arranged as outlined above.
- 5.3.2 **If improvement and performance have reached a satisfactory standard**, the employee will be advised that **no further action needs to be taken**. A follow-up date will be agreed to ensure that the improvement is maintained. The record will be placed on the employee's personal file and only referred to again if the performance fails to maintain the required standard.
- Should performance not be sustained, the process will be resumed at the stage prior to exit.
- 5.3.3 **If improvement and performance have not been achieved**, the meeting will be heard in accordance with Stage 2 of this procedure.

5.4 Stage 2

- 5.4.1 At the meeting the Headteacher/manager will review progress against the improvement plan and confirm where the required standards have not been met.
- 5.4.2 The employee will have the opportunity to comment on their performance assessment, provide an explanation for the reasons for failure or evidence of how they believe that acceptable performance standards have been met.
- 5.4.3 If it is found that performance standards remain unacceptable, a **final warning** may be given and the employee will be informed of the consequences of failure to reach the required performance level. The duration of the 'live' warning, if given, will usually be for a further 12 months (but may be of longer duration in some circumstances).
- 5.4.4 Possible consequences could also include:
- Review of redeployment commensurate with their capabilities. If this is a lower graded post, no pay protection is available.
 - Progression to Stage 3 to recommend dismissal on the grounds of capability.

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- 5.4.5 A further updated improvement plan will be agreed with the employee, together with an appropriate timescale for reaching the required performance standard, and a review date will be set. The employee will be given a further opportunity to indicate what assistance is required to improve performance, including any reasonable adjustments to be considered.
- 5.4.6 The Headteacher/manager will send the employee a letter confirming the outcome of the meeting and the review arrangements and attach a copy of the meeting notes and updated performance plan. The letter will also inform the employee of the possible consequences of failure to reach the satisfactory performance standards.

5.5 **Stage 2 Review**

- 5.5.1 A meeting will be arranged as outlined above.
- 5.5.2 **If improvement and performance have reached a satisfactory standard**, the employee will be advised that **no further action needs to be taken**. A follow-up date will be agreed to ensure that the improvement is maintained. The record will be placed on the employee's personal file and only referred to again if the performance fails to maintain the required standard.
- 5.5.3 Should performance not be sustained, the process will be resumed at the stage prior to exit.
- 5.5.4 **If improvement and performance have not been achieved** a hearing to consider dismissal will be scheduled (Stage 3).

Hearing to consider dismissal (Stage 3)

- 6.1 Where dismissal is recommended by the Stage 2 Headteacher/manager, a Managing Performance and Capability Hearing will be arranged and chaired by either the Headteacher (if not involved in earlier stages) or a panel of Governors in accordance with the Procedure for Conducting Managing Performance and Capability Hearings set out in Appendix 1.
- 6.2 If the Headteacher or panel of Governors determines that the evidence presented supports the dismissal of the employee, the employee will be given notice of their dismissal from the school.

Failure to attend meetings under this procedure

- 7.1 If an employee fails to attend a meeting within this procedure without good cause, action may be taken under the school's disciplinary procedure and, in any event, the meeting may proceed in the absence of the employee.
- 7.2 If an employee fails to attend a meeting due to sickness, this will need to be supported by a fit note confirming the employee was not fit to attend the meeting.
- 7.3 Failure to attend may result in the meeting going forward in the absence of the employee, who will have the opportunity of providing a written statement or being represented by a nominated representative.

Appeal

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- 8.1 An employee wishing to appeal a formal sanction issued at Stage 1 or Stage 2 must submit their appeal in writing to the manager/Headteacher (copying the HR representative) who issued the sanction. The appeal should clearly state the grounds and include details of any new evidence, information or mitigating circumstances that were not previously available or considered.
- 8.2 The appeal must be received within the review period and no later than five working days from the date the sanction was confirmed in writing.
- 8.3 An employee wishing to appeal their dismissal must do so in writing to the Clerk to Governors within 5 working days of receiving notification of the decision. Their role will be to co-ordinate and confirm details of the appeal panel, not previously involved.
- 8.4 The appeal should clearly state the grounds of the appeal and include details of any new evidence, information or mitigating circumstances that were not previously available or considered.
- 8.5 Appeals will be conducted in accordance with the Procedure for Conducting Appeals set out in Appendix 2.

Review of procedure

- 9.1 This procedure will be periodically reviewed.

Appendix 1

Procedure for Conducting Managing Performance and Capability Hearings

This procedure applies to Hearings conducted at Stage 3 of the Managing Performance and Capability Procedure.

1. General Requirements

The meeting will be chaired by the Headteacher (Hearing Officer) (if not involved in earlier stages) or panel of Governors authorised to dismiss an employee.

The Hearing Officer or panel of Governors will be supported by an HR representative who, where possible, has had no prior involvement in the case.

Notification of the meeting will be provided, in writing, at least **5 working days** prior to the meeting and the letter should contain:

a clear explanation of the purpose of the meeting;

- possible consequences of failure to reach the required standards of performance, including the option of dismissal; the time, date and venue of the meeting; who will be present at the meeting;
- a statement confirming the right to be accompanied at the meeting by a trade union representative or a work colleague.

The employee must take all reasonable steps to attend a hearing. If the employee or their companion cannot attend the hearing on the notified date, another hearing will be arranged, so far as is reasonably practicable within 5 working days of the original date. If an employee fails to attend twice, the hearing will proceed in their absence unless there are exceptional circumstances. The employee's companion may attend and present the employee's case and the employee will be permitted to make a written submission in such a situation.

The Headteacher/manager will prepare a report and collate the documentation to be considered at the Hearing. This will cover information about the process to date and should contain:

- details of the objectives set and time frames for improvement
- progress against objectives,
- details about the shortfall in performance
- support provided to the employee
- Impact of below standard performance on the school

This will be passed to the Hearing Officer/Panel of Governors who will ensure that it is sent to all participants at least 5 working days prior to the hearing.

The employee may submit any supporting documentation, which should be forwarded to the Hearing Officer/Panel of Governors at least 3 working days prior to the meeting. This will be forwarded to all those participating in the hearing. If the employee wishes to call any witnesses to the meeting, they

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should also notify the Hearing Officer/Panel of Governors of this at least 3 days in advance of the hearing.

Timescales may be varied in exceptional circumstances by mutual agreement.

2. Conduct of Hearing

The meeting will be conducted as follows:

- a) The Hearing Officer/Panel of Governors will introduce those present and explain why they are there, the purpose of the hearing and how the hearing will be conducted.
- b) The Presenting Officer will present a summary of their report in the presence of the employee and representative and call any witnesses (if required)
- c) The employee or representative may ask questions of the Presenting Officer and any witnesses called
- d) The Hearing Officer/Panel of Governors and HR representative may ask questions of the Presenting Officer and witnesses.
- e) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- f) The employee will then present their case in the presence of the Presenting Officer including any supporting documentation and call any witnesses (if required)
- g) The Presenting Officer may ask questions of the employee and witnesses.
- h) The Hearing Officer/Panel of Governors and HR representative may ask questions of the employee or witnesses.
- i) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- J) The Presenting Officer will have the opportunity to sum up if they so wish
- k) The employee will have the opportunity to sum up they if so wish.

The hearing will then be adjourned for the Hearing Officer/Panel of Governors to consider the facts of the case and make a decision in private. Both parties may be recalled to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return regardless of which party is concerned with the points in doubt.

If it is found that performance standards remain unacceptable, the possible outcomes of the hearing include:

- a) The employee may be given further time for improvement and/or provided with new objectives;
- b) The employee may be dismissed on the grounds of capability.

The decision of the Hearing Officer/Panel of Governors, if not verbally delivered on the day, will be notified in writing within 5 working days. This will include notifying the employee of their right of appeal and the procedure to be followed.

PROCEDURE FOR CONDUCTING APPEALS UNDER THE MANAGING PERFORMANCE AND CAPABILITY PROCEDURE

This procedure applies to appeals raised against dismissal taken under the Managing Performance and Capability Procedure.

1. General Requirements

An employee wishing to appeal against their dismissal decision, must do so in writing to the Clerk to Governors within **5 working days** of receiving written notification of the decision, clearly stating the grounds for the appeal. Their role is to co-ordinate and confirm details of the Appeal Panel, not previously involved. Any documents submitted in support of the appeal must be attached.

The employee may be accompanied by a trade union representative or work colleague at any appeal hearing.

The Presenting Officer at the appeal hearing will be the person responsible for the dismissal decision which is the subject of the appeal.

Any appeal against dismissal will normally be held within **10 working days** of receipt of the submission, and the employee will be given no less than **5 working days'** notice of this hearing.

The Appeal Panel will be advised by an HR Representative not involved in earlier stages.

2. Conduct of Appeal Hearing

The Chair of the Appeal Panel will conduct the hearing as follows:

a) The Chair will open the proceedings with an explanation of the purpose of the hearing and the procedure to be followed, introducing those present. They will confirm the employee's reason for lodging an appeal as submitted in writing.

b) The employee and/or their representative will put their case in the presence of the Presenting Officer outlining the grounds for the appeal and the reasons why they feel the dismissal decision was incorrect. The employee or their representative shall call any witnesses or refer to any documents as necessary. Witnesses shall be called in turn and for each witness the procedure shall be:

- the employee or representative question the witness
- the Presenting Officer questions the witness
- the Appeal Panel question the witness
- Witnesses will withdraw thereafter

c) The Presenting Officer will ask questions of the employee and/or representative.

d) The Appeal Panel will ask questions of the employee and/or representative.

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- e) The Presenting Officer will put the case for managing performance and capability action in the presence of the employee and their representative, calling witnesses and referring to documents, as necessary. Witnesses shall be called in turn and for each witness the procedure shall be as in (b) above.
- f) The employee and/or representative will ask questions of the Presenting Officer.
- g) The Appeal Panel will ask questions of the Presenting Officer.
- h) Both parties will have the opportunity to sum up.
- i) The Chair of the Appeal Panel with the HR representative shall adjourn the hearing to consider the case in private. Both parties may be recalled to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return regardless of which party is concerned with the points in doubt.

When determining the outcome of the dismissal appeal, the Appeal Panel may overturn, vary or confirm the original dismissal decision.

The decision of the Appeal Panel if not verbally delivered on the day, will be notified in writing within 5 working days. The decision of the Appeal Panel shall be final.

Affiliated Document (The document can be accessed on the RBWM intranet.)

Document History

Version	Date	Contributor	Approver
V1.1.0	August 2026	HR Business Partners	Assistant Director of HR, Corporate Projects and IT

Appendix (optional)