



Capability Policy and Procedure for Schools

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1. Introduction

The performance of our staff is key to ensuring the high standards we expect to deliver and managers are expected to proactively performance manage staff to maintain these high standards.

2. Our approach

Employees are expected to perform their duties and responsibilities to the standards set by the school, and to be supported and assisted in achieving these standards by managers who set, communicate and monitor performance of individuals.

The Managing Capability Policy provides a fair and coherent approach to addressing performance issues, with guidance on best management practice and how to achieve equitable solutions when performance falls below the school's required standards. Performance improvement should be achieved through regular support, one to one meetings, coaching, mentoring, training and development. Concerns about performance should initially be addressed as part of the informal one-to-one performance management process and in line with the annual assessment forming the individual's appraisal. This policy should normally be used where there are concerns that the appraisal process has been unable to address. Where the issues causing concern fall outside of the annual appraisal process and/or cannot wait until the individual's formal annual assessment, the informal one-to-one performance management process should be sufficiently robust to demonstrate there has been support and regular feedback, addressing under-performance quickly and setting clear goals and targets.

This policy outlines the approach that managers should adopt if informal action has been unsuccessful in achieving performance improvement.

Where this policy is instigated, the appraisal process will no longer apply and the individual's performance will be managed under this policy.

3. Policy statement

3.1 Policy summary

The Managing Capability Policy forms part of the School's performance management framework.

Where informal action does not achieve improvement formal action must be taken.

The policy is designed to work in conjunction with other School policies: *Appraisal/Performance Management Policy and Procedure for Staff in Schools, Managing Alcohol, Drugs and Substance Misuse at Work Policy and Procedure, Model Pay Policy, Supporting Attendance in Schools, Disciplinary Policy and Procedure, Workplace Resolution Policy and Procedure*. Advice should be taken from the Schools' Human Resources provider when dealing with capability issues which are impacted on by any of the above policies.

The School will ensure that the policy is applied fairly to all employees and does not impact negatively regardless of protected characteristics under the Equality Act 2010.

The School reserves the right to amend this policy from time to time, after consultation with trade unions.

Managers should take primary responsibility for the effective implementation of this policy across the School. They are also responsible for managing the equality impact of the policy and preventing adverse impact on any particular groups of employees wherever possible.

4. Definitions and general information

4.1 Employees

The policy applies to all employees of the School with the exception of:

- Employees in their probationary period. Issues of under-performance during the probationary period should be handled under the school's Probationary Procedure
- Agency workers, who are not employees of the school. Any capability issues should be addressed with the employing agency.

4.2 Managing capability policy

Capability is concerned with an employee's inability to undertake and perform tasks to the required standard. This is different to misconduct where the employee is capable of carrying out the tasks but chooses not to.

Any disagreement between management and the employee concerning the interpretation of the policy should be referred to the Chair of Governors, or their delegated representative whose decision will be final within this process.

4.3 Contractual notice

An employee who is dismissed from the school will normally be entitled to contractual notice or pay in lieu of notice. During the notice period if the employee has not attended work without good cause or has failed to co-operate whilst at work, they will not be paid for any period of non-attendance or lack of co-operation.

4.4 Confidentiality

Confidentiality and privacy will be maintained at all times during the managing capability process. This applies to all correspondence, reports and other documentation. Notwithstanding, employees have the right to involve their union representative on such matters and circulation of information will be that which is necessary to ensure a fair process.

4.5 Records retention

Records must be kept detailing action taken in relation to the Managing Capability Policy and will be retained on the employee's personnel file. These will include:

- The nature of the under-performance
- Action taken and the reasons for it
- Whether an appeal was lodged, and its outcome
- Any subsequent developments.

4.6 Correspondence

All correspondence with employees in relation to management of capability (including letters convening meetings/hearings, documentary evidence and decisions of hearings) should be delivered either by hand on behalf of the School, by post or by email.

4.7 Qualifications and compliance issues

For certain roles there is a requirement for an employee to hold a specific regulatory classification and/or to maintain a certain standard in order to carry out their duties, (e.g. registration with a professional organisation). Formal action under this policy may have implications for such an employee's membership of a professional organisation and/or their ability to carry out the job.

In such circumstances, formal action may have implications for an employee's ability to continue to undertake the duties/responsibilities of the post. If the employee's continued fulfilment of their job would be compromised, the manager must seek the advice of Schools' Human Resources either before the meeting is held or during an adjournment.

If a statutory body is involved (for compliance/regulated posts), serious under-performance issues may need to be reported whilst steps are being taken to improve performance. This will not preclude matters from being dealt with internally as normal. However, if registration is withdrawn by external regulators, the case will need to be reviewed in order to assess the impact on the individual's ability to continue to do their job.

Where qualification and/or compliance issues may be involved, the Schools' Human Resources provider must be consulted before formal action commences.

4.8 Prompt action

There may be occasions where an employee's level of under-performance exposes the school to significant risk if the under-performance continues and prompt action is therefore necessary. There may be other circumstances which may also warrant prompt action, e.g. an employee refuses to accept that there is a problem with their performance, and refuses to co-operate with attempts to achieve an improvement, or where the employee is grossly incompetent. In such instances, a decision may be made to proceed directly to Stage Two of the policy without taking action under Stage One. In such circumstances advice should be sought from the Schools' Human Resources provider before any further action is taken.

4.9 Alternative employment

When managing capability, management and the employee, as an alternative to dismissal, may discuss and consider alternative employment within the School. This option should only be considered at Stage 2 of this procedure. The process may include looking for jobs requiring different skills which are compatible with those possessed by the employee, or for roles that involve less responsibility. This will not normally involve creating a new post, and there will need to be a vacancy for this to be considered in the first place. If the manager believes that this is an appropriate measure but the employee is reluctant to consider this option, the manager should seek advice from the Schools' Human Resources provider. It should however be noted that where an employee chooses not to consider an alternative role, it may ultimately lead to their dismissal. Please note it is not currently possible for a teacher to request to move from the Upper to Main Teaching Pay Range.

Any offer of alternative employment will be made in writing, setting out why the offer is being made and the consequences of refusing the offer which may include the continuation of the

formal capability process and the possibility of their employment being at risk. The employee should be given at least seven working days' notice to consider the offer and discuss it with their representative.

Any offer of alternative employment will be made on a salary equivalent to the rate for the new job. Normally, where the grade of the job being offered is lower, the starting salary will be the minimum spinal column point on the new scale and no period of pay protection will apply. However in exceptional circumstances there will be discretion to place the employee on the appropriate salary point within the pay range of the new role subject to consideration of the individual's skills and aptitude relevant to the new role. In such circumstances, advice should be sought from the Schools' Human Resources provider.

4.10 Review meetings

Capability Review meetings provide the opportunity to set and revise targets, review progress, provide feedback and consider any other action that may be required.

Where early intervention and good management practice through the normal channels does not achieve the required improvement in performance, or the under-performance is more serious, the manager must proceed to the next stage (i.e. first formal stage or first formal stage to second formal stage).

5. Action involving trade union representatives

Where concerns about performance involve an employee who is an official of a recognised trade union, the matter should be discussed at an early stage with an official employed by the relevant trade union. The Schools' Human Resources provider should also be notified as soon as possible about cases involving trade union representatives and will advise if any other action is required. This should not delay managers taking the appropriate steps in the normal way under this policy.

6. Roles and responsibilities

6.1 Employees

Employees must have an understanding of the requirements set out in this policy and ensure that they achieve and maintain satisfactory performance levels. If they have any concerns about their ability to fulfil their duties, employees should inform their manager and co-operate with any strategies implemented to improve the standard of their work.

6.2 Managers

Managers are required to implement the capability management procedures fairly and consistently within their school and ensure that any concerns about performance are addressed promptly and within the timeframes outlined in the procedure. Headteachers may make the decision to dismiss where they have the necessary authority under the School's Constitution.

Management of a Headteachers' capability also falls within this policy, and the Chair of Governors will be required to take action as appropriate in this instance.

6.3 Governors

Governors have the authority to dismiss employees if this power has been delegated to them. (see section 8)

Governors also have authority to hear appeals against dismissal.

6.4 Human Resources

The Schools' Human Resources provider gives advice and support and will attend all meetings where dismissal is a possible outcome and appeal hearings.

6.5 Representation

Employees have the right to advice and guidance at any formal stage in this procedure. Employees also have the right to be represented and/or accompanied by either:

- A trade union representative.
- A work colleague (a person who is a school worker) but not a legal representative.

It is the employee's responsibility to organise representation on the relevant date. Where a trade union representative or work colleague chosen by the employee to accompany them at a capability or appeal hearing cannot attend on the date proposed and they are unable to source another suitable person, then an alternative mutually agreed time and date and meeting will take place within 5 working days.

The representative can put forward a case on behalf of the employee and can give advice and support during the process. The representative cannot, however, answer questions for the employee. The employee must at all stages respond to questions asked during a meeting held under this procedure.

6.6 Monitoring and review

Application of the policy and decisions taken on capability matters will be monitored to ensure consistency and fairness.

This policy will be reviewed as necessary to take account of legislative changes, operational experience and best practice. Should any changes be required, following a review of the policy, the relevant trade unions will be consulted appropriately.

6.7 Timescales

All parties involved in the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this policy are followed. The only exception to this is where the outcome of a case would otherwise be prejudiced. Managers are advised to discuss any variations to the timescales with their Schools' Human Resources provider.

6.8 Records of interviews, meetings and hearings

A written record of all interviews and hearings must be made. It will not be a verbatim record but will accurately reflect all of the issues raised at the interview/hearing and the actions required to rectify performance in line with the requirements and standards for the job.

The manager is responsible for producing the record and, if necessary, may arrange for a separate suitable note taker. Any dispute about the accuracy of the summary will be resolved by the manager with the individual employee. If the employee disagrees with the record of the meeting, they can ask for their comments to be noted for future reference.

7. Formal Action

7.1 Stage One

A meeting between the employee and the manager will be held. The manager will write to the employee setting out:

- Date and time of the meeting
- The requirement to attend a performance meeting, giving five working days notice
- Concerns about performance which have triggered the need to convene a Stage One meeting
- The right to be represented
- The requirement for the manager and the employee to provide any supporting evidence which they may wish to rely upon at least three working days before the meeting.
- Teaching staff will be informed that they will not be eligible for pay progression whilst the subject of formal Capability proceedings.
- Support staff will be notified that any salary increment due will be withheld whilst the employee is subject to formal Capability proceedings.

The aims of the meeting are to:

- Specify where performance falls short of the standard
- Set targets for improvement
- Identify measures against which performance will be assessed
- Put in place an action plan setting out the support to be provided
- Warn the employee of the consequences if their performance does not improve
- Set a date for a further meeting to review progress against the performance targets set for improvement. The length of the review period will normally be between 4 to 6 weeks for support staff; and between 4 to 10 weeks for teaching staff depending on individual circumstances.

7.2 Stage One outcomes

There are three possible outcomes at the end of the review period.

1. Performance has improved to the required standard and no further action is required, other than to inform the employee of the need to sustain the level of improvement and the consequences of not doing so. The appraisal process will restart at this point, where appropriate. Teaching Staff will be informed that they will now be eligible for pay progression and any withheld pay progression will now be applied from the date of the decision letter. Support Staff will be notified that any withheld increment will now be applied from the date of the decision letter.
2. Where an employee's performance has not met the standard but there is evidence to show that a further period of monitoring and review is likely to achieve the standard, a decision may be taken to extend the initial review period for a further period between 4 to 6 weeks. The employee will continue to have their annual increment / pay progression withheld whilst within formal Capability proceedings.

3. The employee's performance has not met the standard and a decision is taken to proceed to Stage Two. As in 7.2(2) above the employee will not be entitled to an annual increment / pay progression

If there is evidence that during the review period the employee's performance will not reach the required standard by the end of the period then it is not necessary to wait until the review period is completed before proceeding to Stage Two.

Where a decision is taken to extend the review period, the manager and employee will revise the action plan based on progress made, and the arrangements set out in the plan for monitoring and reviewing performance will be followed.

Where the required level of improvement has been achieved, performance will be monitored and managed in line with the appraisal process (see point 2, page 3), and should it not be sustained in the following 12 month period, action may be reinstated at Stage Two of the procedure which could ultimately lead to dismissal.

The manager will confirm the outcome of the meeting in writing within five working days of the verbal notification of the decision, noting any particular areas of disagreement that the individual has raised where appropriate

There is no right of appeal against a Stage One outcome.

7.3 Stage Two

The meeting will be conducted by a manager who is authorised to dismiss, who has had no previous involvement in the case, advised by a member of the School's Human Resources provider. The manager who managed the previous Stage One process will also attend the meeting to present the findings of the Stage One process and what actions have been taken to support the employee to improve their performance. The manager conducting the Stage Two meeting will ensure that the employee has seven working days' notice of the meeting.

The written notification will set out:

- Date and time of the meeting
- The requirement to attend a Stage Two performance meeting
- The manager's continuing concerns about under-performance which have triggered the need to convene a Stage Two meeting
- The status of the meeting and that dismissal could be a possible outcome
- The employee's right to be represented.
- Teaching staff will be informed that they will not be eligible for pay progression whilst the subject of formal Capability proceedings.
- Support staff will be notified that any salary increment due will be withheld whilst the employee is subject to formal Capability proceedings.

Any supporting evidence to which management or the employee may wish to rely on at the meeting should be provided to the other party and to the manager at least three working days in advance of the meeting.

The aims of the meeting are to:

- Review performance and the action taken to achieve the required improvement
- Where improvement has been unacceptable consider whether to dismiss or recommend dismissal
- Where it is decided the employee has demonstrated that with further support they are likely to achieve the required level of improvement, review and as appropriate revise the targets and action plan designed to support the required improvement in performance and normally allow between 4 to 6 weeks for support staff to improve; and between 4 to 10 weeks for teaching staff depending on individual circumstances to improve
- Monitor progress
- Set a date for a formal review meeting.

7.4 Stage Two outcomes

There are four possible outcomes:

1. At the end of a Stage Two review period, performance has improved to the required standard and no further action is required. The employee will be informed of the need to sustain the level of improvement and the consequences of not doing so. For support staff, any increments due will become applicable from the date of the decision letter. Teaching Staff will be informed that they will now be eligible for pay progression and any withheld pay progression will now be applied from the date of the decision letter. The appraisal process will re-start at this point.
2. At the end of a Stage Two review period, the required standard has not been reached. A decision may be taken to further extend the review period, by between 4 to 6 weeks where there is evidence to show that a further review period will lead to the required improvement. The employee will be warned that failure to reach the required standard is likely to lead to dismissal. The employee will continue to have their annual increment / pay progression withheld whilst within formal Capability proceedings.
3. At the end of a Stage Two review period where the employee's performance has not met the required standard and it is considered unlikely that the required standards will be met, then the manager will take a decision to dismiss or recommend dismissal. Subject to there being an established vacancy within the school, consideration can be given to an option of demotion/alternative employment at this point in the process. This can only be through mutual agreement which should be documented, and advice should be sought from the Schools Human Resources provider. If mutual agreement is reached, the employee has no right to salary safeguarding/protection since the individual has voluntarily accepted the demoted role/alternative employment. The demoted role/alternative employment position will become the individual's substantive role.
4. On completion of a Stage Two meeting the employee's performance has not met the required standard and they have not demonstrated that they are likely to achieve the desired improvement within a reasonable period of time. A decision is taken to dismiss or to recommend dismissal.

The manager will confirm the outcome of the meeting in writing within five working days.

Where the required level of improvement is achieved the employee's performance will be monitored and should it not be sustained in the following 24 month period, action may be reinstated at the Stage Two of the Policy which could lead to dismissal. Following a period of sustained improvement but where there is another decline in performance, this will automatically trigger the employee having their annual increment / pay progression withheld, effective from the date of notification that the Stage Two has been re-activated.

8. Dismissal approval process

Where the Stage Two meeting may result in a dismissal/recommended dismissal, the meeting must be conducted by the Headteacher or by a Governing Board Panel/Committee. The Headteacher can only dismiss/recommend dismissal where they have necessary authority under the School's Constitution and where the Headteacher has not been involved in managing the process for the individual at Stage One.

Community/Maintained Establishments Only

Where the person(s) conducting a Stage Two meeting has made a determination under the School Staffing (England) Regulations that the employee should cease to work at the School (i.e. where the School is a community, community special, maintained nursery or voluntary controlled school) the person chairing the hearing must formally notify the Director of Children's Services or other person authorised by the Director to dismiss employees based at the School on behalf of the School's Governing Board in writing of the decision of the panel and of the reasons for the decision.

The Director of Children's Services or equivalent or other person authorised by the Director to dismiss employees based at the School will confirm to the employee that the Local Authority has been notified and their employment with Brent Council will be terminated with effect from the date specified in the letter of notification from the Director/ other authorised person.

9. Appeals

All employees have a right to appeal against dismissal. An appeal lodged against dismissal does not require the employee to be reinstated pending appeal.

An appeal may be lodged on one or more of the following grounds:

1. Procedure – where failure to follow the correct procedure had a material effect on the decision
2. The facts of the case – where the Hearing Manager came to the conclusion on a material point of fact, which no reasonable person could have reached
3. Sanction – where the decision to opt for dismissal rather than an alternative option was one that would not have been reached by any reasonable Hearing Manager
4. New evidence is available that could not have reasonably been raised at the Stage Two performance meeting and the absence of which had a material effect on the decision.

Appeals must be lodged within 10 working days of the date of the letter informing the employee of the outcome of the Stage Two performance meeting. The appeal should be submitted in writing to the person advised in the outcome letter.

The appeal notification must set out clearly:

- The grounds for the appeal (i.e. one or more of the four listed above)
- The detailed basis, as far as possible, for each ground of appeal to be relied on
- In the case of new evidence, details of the evidence must be included when lodging the appeal.

The conduct of an appeals hearing is as follows:

- Manager's case examined and questioned
- Case for the employee examined and questioned
- Further questioning and clarification as requested by the Hearing Manager
- Closing statements
- Decision.

Appeals against dismissal on grounds of capability will be heard by Governors. Those governors hearing the appeal should be impartial and uninvolved in the earlier stages of the process.

The employee and (where necessary) their representative will be given in writing at least seven working days' notice of:

- Date, time and place of the appeal hearing
- Details of the person hearing the appeal and the person presenting the management case
- Their right to attend and be represented at the appeal
- The requirement that any documentation to be relied upon and the names of any witnesses it is proposed to call must be provided to the Governors Appeal Hearing panel and presenting manager at least three working days prior to the hearing.

The Clerk to the Governing Board will usually be responsible for communicating this information to the employee and their representative.

The Clerk, in consultation with the Schools' Human Resources provider where appropriate, will arrange for the employee to receive any documentation to be relied upon by management at the appeal hearing, including the summary record of the Stage Two meeting at which the decision to dismiss was taken and names of any witnesses to be called, at least three working days before the appeal hearing.

Provided the employee has been given the appropriate notice of the date of the appeal hearing, the appeal may be considered on the basis of the available evidence in the absence of the individual, unless there are acceptable reasons to defer the hearing.

The appeal hearing will not be a full rehearing of the issues, but will only address the specific grounds of appeal set out in the employee's letter of appeal.

The possible outcomes of an appeal hearing are as follows:

1. Uphold the appeal in full
2. Uphold the appeal in part
3. Not uphold the appeal.

There is no further right of appeal.

Where the Appeal Hearing Panel decides to uphold the appeal on the grounds of procedure or new evidence, they will have the discretion to either:

- Refer the case back to the original Hearing Manager (or governor's panel/committee) with advice from the Schools' Human Resources provider;
- Refer the case back to a new Hearing Manager (or governor's panel/committee);
- Hear the case themselves