





Capability Policy for Non-Teaching Staff (SMBC)

Responsible person	
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Signed by Governors	
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Summary of Amendments

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Schools' Model Capability Policy for Non-Teaching Staff

1.0 Introduction

- 1.1 This Policy provides a procedure to support Governing Bodies in managing situations where employees who are not currently achieving the required standard improve their performance at work. Schools require all staff to sustain a satisfactory standard and it is the responsibility of all managers to take active steps to manage the performance of their staff and to support those who may require additional assistance.
- 1.2 It is recognised that careful recruitment, induction, professional development/in-service training and the appropriate use of supervision discussions all positively contribute to minimising the risk of poor performance. This Policy is not designed to be a punitive management process but is intended to encourage improvement in work performance at an early stage before the situation becomes unmanageable.
- 1.3 The process is not completed within the School/Council until the appeal process has been exhausted.
- 1.4 The Local Authority recommends Schools to adopt this Policy, especially where Sandwell MBC is the employer.
- 1.5 Copies of this Policy should be made available to all employees to whom it applies and an employee subject to this process may on request also be provided with a copy of the Schools' Model Capability Policy Guidance for Non-Teaching Staff.

2.0 Scope

- 2.1 This Policy applies to all School based Non-Teaching employees as well as all employees of Pupil Referral Units (PRUs). In PRUs the references in the procedure to Governing Body Committees will mean the Management Committees.
- 2.2 This Policy does not apply to the performance of Teachers.

3.0 Exceptions

This Policy should **not** be used for:

- 3.1 concerns relating to an employee's incapability due to ill health; in these circumstances the Schools' Model Management of Absence Policy should be referred to.
- 3.2 concerns due to an employee's refusal to perform to acceptable standards i.e. where they are capable but unwilling; in these circumstances the Schools' Model Disciplinary Policy should be referred to.
- 3.3 workers e.g. people engaged through Templink.
- 3.4 employees whose performance is subject to a probationary period.

- 3.5 employees engaged on fixed-term contracts who will not have their contracts extended solely for the purpose of completing proceedings relating to this Policy.
- 3.6 where an individual who is subject to this Policy is a trade union representative, no action will be taken until the circumstances of the case have been notified to a full-time officer of the trade union concerned.

4.0 Definitions

- (a) **Designated Person(s):** The Designated Person is the Headteacher. However, certain responsibilities will be delegated to the appropriate Line Manager/Senior Manager within the School to deal with performance management issues at the Informal Stage and Formal Stage 1.
- (b) **Representative:** an employee is entitled to be accompanied at each formal meeting by an accredited trade union representative or work colleague if they so wish.
- (c) **The Committee:** means the Committee appointed by the Governing Body with delegated powers to undertake the functions prescribed for a Committee in this Policy and consists of a minimum of 3 members.
- (d) **Appeals Committee:** means the Committee consisting of a minimum of 3, or equivalent to the number on the Committee. Members of the Appeals Committee should have had no prior involvement in the case.
- (e) **Personal File:** means that file maintained by and/or for the Director of Children's Services relating to the specific individual concerned.
- (f) **Unsatisfactory Performance:** "The continuing failure of an individual to meet the requirements of the job, including meeting agreed targets and/or providing a satisfactory service."

5.0 General Principles

- 5.1 The Policy does not form part of the terms of an employee's contract with Sandwell MBC/the School which are provided separately.
- 5.2 This Policy must be applied in conjunction with the Schools' Model Capability Policy Guidance for Non-Teaching Staff and those affected should also be provided with a copy of this Guidance.
- 5.3 This Policy takes into account current employment legislation, good practice and the appropriate provisions of the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice.
- 5.4 This Policy is intended to be a fair and consistent method of dealing with matters concerning an employee's capability at work.
- 5.5 The requirements of the Equality Act 2010 have been fully incorporated into the Policy. If an employee has a disability as defined in the Equality Act 2010

it will be necessary to make all appropriate 'reasonable adjustments' before considering any action under this Policy.

- 5.6 At any stage in the process, following further enquiries, the Designated Person may invoke an alternative Policy.
- 5.7 Employees should demonstrate their commitment to manage their own performance and this should be taken into account in discussions related to this Policy.
- 5.8 Employees must be informed of their right to be accompanied by a work colleague or trade union representative at each Formal Stage.
- 5.9 Performance issues should always be discussed at the earliest opportunity and, if there are concerns, these should not necessarily be delayed until any planned supervision discussion.
- 5.10 All parties will deal with issues promptly and not unreasonably delay meetings/hearings, decisions or confirmation of those decisions.
- 5.11 Where a meeting needs to be rescheduled, it can normally only be rescheduled once. A new date must be agreed within five working days of the original date. The actual meeting/hearing date need not be within those five days but should be as soon as possible.
- 5.12 All matters will remain confidential in accordance with the Data Protection Act 1998, except in circumstances where there is a legal obligation to disclose such information.
- 5.13 The employee has a right of appeal against a decision made during each Formal Stage.
- 5.14 The decision at the final appeal hearing exhausts the internal process.
- 5.15 All formal records and copies of correspondence will be retained on the employee's personal file.

The following key principles are incorporated into the stages of this Policy:

- 5.16 Where there is a reasonable basis to consider the employee's level of performance is such that a) serious or gross incapability has occurred or b) its continuance is sufficiently serious and is having, or is likely to have a harmful effect on the School/Council, requiring immediate rectification, then the following options may apply:
 - earlier stages of the Policy may be bypassed and/or the Designated Person does not need to wait until the agreed monitoring period has expired **or**;

- it may be justifiable to take further action at a higher stage under the Policy if reasonable support has already been given.
- 5.17 When setting monitoring periods consideration should be given to the availability and duration of any training identified.
- 5.18 Timescales are included to ensure consistency of treatment. However, they may be extended by mutual agreement in extenuating circumstances.
- 5.19 Subject to there being no significant changes to their role, if the employee's performance deteriorates again and they fail to meet the targets set within 12 months of written agreement that their performance is at the required level under this process, the manager may resume the process at the stage reached previously.
- 5.20 If an employee lodges a grievance against the Designated Person at any stage of the Policy, then this will be dealt with through the appeals process within this Policy. However, if the grievance is about an unrelated matter, this may be progressed concurrently.

6.0 Informal Stage

The Schools' Capability Policy Guidance for Non-Teaching Staff provides more detail on the process but the below outlines the key areas and stages to be followed:

- 6.1 The manager will arrange to meet with the employee at an informal level to discuss performance concerns and any underlying causes, to ensure a clear understanding of performance shortfalls, improvements required and timescales for improvement. The employee shall receive written notice of not less than 5 working days' notice before the date of the meeting.
- 6.2 A note of this meeting including any support/training provided must be placed on the employee's personal file and a copy given to the employee.
- 6.3 To underline the aim of resolving performance concerns at the earliest opportunity and before they escalate, employees will not have the right to be accompanied at the Informal Stage.

7.0 Formal Stage 1 (Senior Manager)

- 7.1 Where an employee's performance has not improved sufficiently following the review at the Informal Stage, then a formal meeting will be convened at Stage 1 of the Policy. The employee shall receive written notice of not less than 5 working days' notice before the date of the meeting and must be informed of his/her right to be represented by an accredited trade union representative or fellow work colleague.

7.2 This meeting will be chaired by a Senior Manager who has had no previous direct involvement in the case and the employee will be informed in writing of the outcome and any recommendations made within 5 working days.

7.3 The Chair will confirm their decision in writing and the options are to:

- a) refer it back to the informal process with instructions for further action;
or
- b) issue a 'notice to improve' with an action plan and targets; and
- c) set a monitoring period of up to 8 weeks after the appropriate training has been undertaken.

8.0 Formal Stage 2 (Headteacher)

8.1 If the targets set at Formal Stage 1 have not been achieved and/or performance remains unacceptable, then a formal meeting will be convened at Stage 2 of the Policy. The employee shall receive written notice of not less than 5 working days' notice before the date of the meeting and must be informed of his/her right to be represented by an accredited trade union representative or fellow work colleague.

8.2 This meeting will be chaired by the Headteacher who will have had no previous direct involvement in the case and the employee will be informed in writing of the outcome and any recommendations made within 5 working days.

8.3 The Chair will confirm their decision in writing and the options are to:

- a) refer it back to Formal Stage 1; **or**
- b) issue a 'final notice to improve' with an action plan and targets; and
- c) set a monitoring period of up to a further period of 8 weeks.

9.0 Formal Stage 3 (Staffing Committee)

9.1 If a final improvement warning has been issued but the employee's performance targets have not been met and/or their performance remains unacceptable, then a formal hearing will be convened at Stage 3 of the Policy. The employee shall receive written notice of not less than 5 working days' notice before the date of the hearing and must be informed of his/her right to be represented by an accredited trade union representative or fellow work colleague.

9.2 This hearing will take place before the Staffing Committee of the Governing Body and the employee will be informed in writing of the outcome and any recommendations made within 5 working days.

- 9.3 The Local Authority, through a representative of the Director of Children's Services, has an entitlement to attend for the purposes of giving advice where dismissal may be a possibility.
- 9.4 The Chair will confirm their decision in writing and the options are to:
- a) dismiss the employee in line with their Statement of Written Particulars and the notice shall be effective from the date upon which the decision is communicated to him/her by the Director of Children's Services. The Committee may decide that a payment in lieu of notice be paid to the employee; **or**
 - b) extend the monitoring period for up to a further 4 weeks and delay making a final decision about the employee's continued employment until after this extended period has elapsed; **or**
 - c) refer it back to Stage 2 and provide revised performance targets.

10.0 Appeals

- 10.1 An employee may appeal against decisions taken at any Formal Stage of the Policy. The appeal must be made in writing within 10 working days of the decision, giving full reasons for the appeal.
- 10.2 For the purposes of clarity an appeal against:
- the decision of a Senior Manager (Formal Stage 1) will be dealt with impartially by another Senior Manager who has had no previous direct involvement in the case.
 - the decision of the Headteacher (Formal Stage 2) will be heard by the Staffing Committee.
- 10.3 An appeal against dismissal (Formal Stage 3) or any other decision made by the Staffing Committee will be considered by the Appeals Committee of the Governing Body.
- 10.4 The decision of the Appeals Committee is final and exhausts the internal process.