

## HARROW SCHOOLS CAPABILITY POLICY AND PROCEDURE

INDEX	PAGE NO
1. INTRODUCTION.....	2
2. SCOPE .....	2
3. ROLES AND RESPONSIBILITIES .....	2
4. PRINCIPLES.....	3
5. FAIR DISMISSAL PROCESS.....	4
6. RIGHT TO REPRESENTATION.....	4
7. WHAT COULD CONSTITUTE A CAPABILITY MATTER? .....	4
8. TEACHER CAPABILITY.....	5
9. INFORMAL CAPABILITY PROCESS .....	5
10. STAGE 1 - FORMAL CAPABILITY PROCESS .....	6
11. STAGE 2 - FORMAL CAPABILITY PROCESS.....	8
12. STAGE 3 - FORMAL CAPABILITY PROCESS.....	.8
13. STAGE 4 - APPEAL PROCESS.....	9

## 1. INTRODUCTION

- 1.1 Harrow Council wants to ensure that all employees are supported and developed so that they can achieve and deliver the best work they are able to. This policy is designed to encourage and maintain standards of capability, efficiency and work performance.

There are 4 stages within this policy set out as follows:

### CAPABILITY STAGES

Informal	Informal Guidance
Stage One	1 <sup>s</sup> Formal review and meeting
Stage Two	2 <sup>nd</sup> Formal review and meeting
Stage Three	3 <sup>rd</sup> Formal meeting
Stage Four	Appeal (applied at any formal stage where a sanction has been applied)

- 1.2 This document sets out the School's Capability Policy for all employees (including teachers and head teachers) and provides a structure for management to manage an employee's work performance which is falling below an acceptable level. It is important that every effort is made to follow a fair procedure at each stage in the capability process and this document sets out guidelines to ensure that this is the case.

## 2. SCOPE

Once adopted by the Governing Body, the Capability Policy applies to:

- School employees employed on Harrow Terms and Conditions of Employment.
- Teachers and head teachers on School Teacher Terms and Conditions of Employment.

## 3. ROLES AND RESPONSIBILITIES

- 3.1 The Governing Body will have ultimate responsibility for the regulation of the capability of employees in the School, adopt an appropriate Capability Procedure, decide whether or not to collaborate with one or more other Governing Bodies in their arrangements for dismissal and delegate to the head teacher the authority to manage this process, unless the capability concerns relate to the head teacher, in which case the Governing Body will manage the process..

- 3.2 The Governing Body will set up three different committees:

- **A Warning Appeal Committee** – used when the employee appeals against any decision other than dismissal. This Committee should be comprised of at least two Governors
- **A Staff Dismissal Committee** – set up to hear the final stage of the Capability Procedure in cases where the head teacher has exhausted Stage One and Stage Two of the policy, or in cases where the head teacher is the subject of the capability concerns. This Committee should be comprised of at least two Governors with a HR adviser present.

- **A Staff Dismissal Appeals Committee** – set up to hear appeals against decisions to dismiss. This committee should comprise of three Governors and an HR Adviser...

Each school needs to determine the composition of each committee, however no member involved in a staff dismissal committee should take part in the staff dismissal appeals committee.

- 3.3 The Governing Body will also notify the Divisional Director Education Services or the Diocesan Director for Voluntary Aided Schools of any Capability meeting which could lead to dismissal and seek advice from HR about notification to the Secretary of State whenever a teacher is dismissed on the grounds of capability.
- 3.4 The Council will write to the Chair of the Governing Body if it has a serious concern about the performance of the head teacher and will at the same time send a copy to the head teacher. The head teacher will be given an opportunity to make representations to the Chair of the Governing Body about the report and will have the right to be accompanied (Section 6). The Chair of the Governing Body will write to the Divisional Director Education Services to inform them on the action they intend to take.
- 3.5 The head teacher has the authority to give formal written warnings through this procedure. The head teacher will also identify those senior employees in School who have the authority to give formal written warnings.
- 3.6 The head teacher and/or chair of the governing body will:
- Set and maintain clear, realistic and fair standards of performance at work.
  - Handle performance issues informally and promptly during day to day interactions, in supervision sessions, one to one sessions, appraisal etc.
  - Bring the Capability Policy to the attention of all employees in the school.
  - Ensure that positive and supportive measures are put in place where staff may be underperforming.
  - Deal with under performance as and when it arises and inform employees when their work is falling below standard.
  - Encourage employees to seek advice from their Trade Union if they are members of a Union if at any stage of this process they have concerns.
  - Monitor the process when the Capability Procedure is used in relation to any employee and report any action taken under the procedure as and when required by the council.
  - Be aware of and refer to the Health & Attendance Policy for health related poor performance and seek medical advice when appropriate.
- 3.7 Employees will:
- Work with the head teacher (or Governing Body where the case is in relation to the head teacher) to resolve any identified performance problems.
  - Co-operate with any investigation under the Capability Policy.
  - Co-operate with all reasonable management instruction whilst performance issues are being managed.

#### **4. PRINCIPLES**

- 4.1. The policy is founded on the following principles:
- That all employees of the school know what performance standards are expected of them.
  - Informal action should always be considered in the first instance during day to day interactions, in supervision sessions, one to one sessions, appraisal etc.

- That performance standards are reasonable, realistic and achievable, taking into account, available resources, the employee's working hours, job description and contractual terms.
- To actively support and encourage employees to improve unsatisfactory performance, as opposed to imposing formal sanctions wherever possible.
- To provide appropriate development, training and support to assist with the above.
- To ensure it is understood that matters dealt with by way of the Capability Policy are different from misconduct issues.
- Employees will not normally be dismissed for performance reasons without a previous warning(s).
- Employees have the right to be represented by a trade union representative or work colleague during the formal procedure.
- To ensure a fair and structured process is applied consistently, that the employee's account is heard, that they are informed of their right to be accompanied, and that any formal steps taken are confirmed in writing, clearly stating a right of appeal.
- To ensure that matters are dealt with as quickly and reasonably as possible.
- Not to discriminate against any individual in the application of this policy on the protected characteristics of age, sex, race, disability, gender reassignment, marriage or civil partnership, maternity and pregnancy, religion or belief, sexual orientation, or other grounds protected in law e.g. part time worker status, trade union membership/activities or HIV positive status.
- No action to be taken against a trade union representative until the matter has been discussed with the Branch Secretary or relevant full time union officer.
- Employees have the right of appeal against any formal action.

## **5. FAIR DISMISSAL PROCESS**

A dismissal by reason of capability will normally be considered fair if the employer has:

- Set reasonable standards of performance and
- Made these clear to the employee
- Warned of the consequences of failing to meet them
- Given support, training or both
- Given reasonable time for improvement
- Considered redeployment or other alternatives to dismissal and performance is still deemed to be unsatisfactory after a-f have been exhausted.

## **6. RIGHT TO REPRESENTATION**

An employee has the right to be accompanied by their trade union representative or work colleague at any formal capability meeting. The employee should advise the head teacher/Governing Body of the name and job title of their chosen representative.

## **7. WHAT COULD CONSTITUTE A CAPABILITY MATTER?**

A capability matter arises when standards which apply to all employees are not being satisfactorily met e.g. there are work concerns about an individual teacher who is failing to carry out responsibilities or duties in a satisfactory manner and those professional shortcomings are due to the employee's skills or aptitude. Capability cases may arise due to lack of professional awareness, inability to cope with what is considered reasonable

workloads or being unable to meet identified standards. It may also be an inability to prioritise work, insufficient training or difficulty in adapting to change. In all these cases there must be facts to support these concerns which clearly demonstrate that acceptable standards of performance in carrying out the teacher's role are not being met.

## **8. TEACHER CAPABILITY**

In addition to Section 7, the Department for Education (DfE) has provided 8 Standards for teaching and for personal and professional conduct of teachers as set out in the Toolkit. Failure to meet these standards may result in this capability process being invoked.

At any capability meeting for teachers, or the head teacher, the person conducting the meeting shall:

- Identify the professional shortcomings, for example which of the standards expected of teachers are not being met. Written details shall be provided to the teacher in the form of a Performance Improvement Plan (PIP), see Appendices 2 & 3 in the Toolkit for guidance and pro forma;
- Give clear guidance on the improved standard of performance needed to ensure that the teacher can be removed from formal capability procedures (this may include the setting of new objectives focused on the specific weaknesses that need to be assessed, any success criteria that might be appropriate and the evidence that will be used to assess whether or not the necessary improvement has been made. Written details shall be provided to the teacher in the form of a PIP, see Appendices 2 & 3 in the Toolkit for detailed guidance.
- Explain and agree where possible, the support that will be available to help the teacher improve their performance;
- Agree and set out the timetable for improvement in a PIP see Appendices 2 & 3 in the Toolkit and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case. It is for the school to determine the set period. It should be reasonable and proportionate, but not excessively long, and should provide sufficient opportunity for an improvement to take place.
- Explain to the teacher that failure to improve within the set period could ultimately lead to dismissal.

## **9. INFORMAL CAPABILITY PROCESS**

Managers should ensure they have tried to address performance concerns with an employee early on to avoid the need to pursue formal capability action later. Where managers have tried to manage an employees performance via supervisions, one to ones, appraisals or other means but this has not resolved the performance issues, then consideration should be given to the informal capability process.

The employee should be invited to a meeting and made aware that there are concerns about their performance, informed of what those concerns are and provided with constructive advice to assist in overcoming those concerns. It should be made clear that the appraisal process has stopped and that the capability process has commenced. A copy of the Capability Policy and Procedure shall be given to the employee. If possible reference must be made to notes of meetings, evidence or lesson observations where concerns have previously been highlighted and the employee should be provided with examples of where their work has not met a satisfactory standard.

The meeting allows the employee to respond to concerns and to make relevant representations. This may provide new information or a different context to the information/evidence already collected. Once the facts are gathered there are three options for the line manager conducting the meeting:-

- i. Decide that there are insufficient grounds for pursuing the capability issue and it would be more appropriate to continue to address the concerns through supervision.
- ii. Arrange support without invoking the formal procedure. The employee must be told what is required, how performance will be reviewed, the length of the review period and that the formal procedure will commence if there is no improvement. If the employee expresses discontent or indifference to the support offered, the formal procedure should be commenced to deal with the matter in a more structured and objective manner.
- iii. Issue an Informal Guidance letter. Managers should continue to monitor progress and performance during the Guidance period. The employee will be set targets/objectives with an agreed action plan to be approved in writing by all parties.

Following the meeting a letter should be sent to the employee to explain the clear outcomes that are required to reach an acceptable standard and the support that will be offered to the employee to improve performance.

At the end of the informal process, a review meeting will take place and the capability procedure will either cease or a Formal Capability Meeting will be convened.

In some cases where the performance concern(s) is/are so significant it may be acceptable and justified to move straight to the formal process.

## **10. STAGE 1 - FORMAL CAPABILITY PROCESS**

The Capability Policy and Procedure provides a mechanism to invoke the formal capability process where there are serious concerns that the informal process has been unable to address or where the education of children is in jeopardy. For further guidance please go to Section 11 in the Capability Toolkit.

### **10.1 1<sup>st</sup> FORMAL CAPABILITY MEETING**

Where a decision has been made to convene a capability meeting at least 10 working days' notice in writing will be given. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case at a formal capability meeting and will contain copies of any written evidence. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. This meeting is intended to establish the facts. All relevant documentation will be provided to the employee no later than 5 working days prior to the Formal Capability meeting.

The person conducting the meeting may conclude that:

- There are insufficient grounds for pursuing the capability issue and that it would be more appropriate to continue to address the remaining concerns through the appraisal process. In such cases the capability procedure will come to an end.
- The person conducting the meeting may also adjourn the meeting for example if they decide that further investigation is needed, or that more time is needed in which to consider additional information.

- A monitoring and review period is needed to assess performance. In these circumstances a Performance Improvement Plan (PIP) (see appendices 1 & 2 of the Toolkit) shall be agreed between the employee and their line manager. The purpose of the PIP is to enable formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and line manager to be undertaken during the Monitoring and Review Period.

Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

## 10.2 1<sup>st</sup> MONITORING AND REVIEW PERIOD

A performance monitoring and review period will follow the capability meeting. Observations that are to take place as part of the process should include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will also be agreed for this period. It will be recorded in a Performance Improvement Plan (PIP) (see Appendices 1 & 2 in the Toolkit).

The employee will be invited to a Formal Review Meeting following the monitoring and review period.

## 10.3 1<sup>st</sup> FORMAL REVIEW MEETING

At least five working days' notice in writing will be given of the formal review meeting. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. Notification will include copies of evidence for discussion.

- If the person conducting the meeting is satisfied that the employee has made **sufficient improvement**, the capability procedure will cease and the appraisal process will re-start;
- If **some progress** has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If **no**, or **insufficient improvement** has been made during the monitoring and review period, or **performance has deteriorated** the employee may receive a **written warning**. In such circumstances a warning letter should be issued within 5 working days of the meeting. It should identify the precise nature of the capability issue and confirm the employee's right of appeal within 10 working days of the date of the letter. Minutes of the meeting will be taken and a copy sent to the employee and their representative within 5 working days of the meeting. The employee has a right to appeal against any formal warning received (Refer to Section 13 Appeal Process within this policy and procedure.

## 11. STAGE 2 – FORMAL CAPABILITY PROCESS

### 11.1 2<sup>nd</sup> MONITORING AND REVIEW PERIOD

A further performance monitoring and review period will follow the 1<sup>st</sup> Formal Review Meeting that resulted in the issue of a written warning. Observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP (see appendices 1 & 2 in the Toolkit).

## 11.2 2<sup>nd</sup> FORMAL REVIEW MEETING

At least five working days' notice in writing will be given of the Formal Review Meeting. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case and will contain copies of any written evidence.

The purpose of the monitoring and review period will be to enable an assessment to be made against the PIP.

- If **sufficient improvement** has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start;
- If **some progress** has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If the employee has received a written warning and their performance remains **unsatisfactory** then they may be issued with a final written warning
- The employee has a right to appeal against any formal warning received (refer to Section 13 Appeal Process) within this policy and procedure.

Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

## 12. STAGE 3 – FORMAL CAPABILITY PROCESS

### 12.1 3<sup>rd</sup> MONITORING AND REVIEW PERIOD

A performance monitoring and review period will follow the Formal Review Meeting that resulted in the issue of a final written warning. Observations that are to take place as part of the process are to include an agreed number of planned visits. The purpose is to enable improvement, and adequate time between visits is important. Formal monitoring, evaluation, guidance and support based on professional dialogue between the employee and their line manager will again be agreed and continue during this period. It will be recorded on a PIP (see appendices 1 & 2 in the Toolkit).

### 12.2 3<sup>rd</sup> FORMAL REVIEW MEETING

At least five working days' notice in writing will be given of the Formal Review Meeting. The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. The notification will contain sufficient information about the concerns about performance and their possible consequences to enable an employee to prepare to answer the case and will contain copies of any written evidence.

The purpose of the monitoring and review period will be to enable an assessment to be made against the PIP.

- If **sufficient improvement** has been achieved during the further monitoring and review period, the capability procedure will end and the appraisal process will re-start;
- If **some progress** has been made and there is confidence that more is likely, it may be appropriate to extend the monitoring and review period;
- If insufficient improvement has been made during the monitoring and review period and, their **performance remains unsatisfactory**, then they shall be invited to attend a 3rd stage Final Hearing..

Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

### 12.3 3<sup>rd</sup> STAGE HEARING

The 3<sup>rd</sup> Stage Final Hearing will be conducted by the Staff Dismissal Committee. At least five working days' notice in writing will be given of the hearing. The employee must be advised at this stage that the hearing may lead to a dismissal.

The notice shall also confirm the employee's right to be accompanied by their trade union representative or work colleague. Notification will include copies of evidence that have led to the Hearing.

Any decision to dismiss will be confirmed in writing by the Staff Dismissal Committee within 5 working days of the decision. The employee will be entitled to receive their contractual notice entitlement. The letter should confirm the employee's right to appeal the decision of the panel. This will need to be received in writing within 10 working days of written notification of the decision.

Minutes will be taken and a copy sent to the employee and their representative within 5 working days of the meeting.

### 13. STAGE 4 - APPEAL PROCESS

If an employee wishes to appeal against any formal action taken against them under the above stages they must do so in writing within 10 working days of written notification of the decision.

Once an appeal has been received in writing an appeal committee will be convened within 20 working days. An appeal may be raised on one or more of the following grounds:

- Procedure – failure to follow procedure has had a material effect on the decision
- Decision – the evidence did not support the conclusion of the hearing officer
- Warning – too severe given the circumstances of the case
- Alternative action – should (or should not) have been considered.
- The employee should send their letter of appeal to the person and address confirmed in the in the decision letter within **10 working days of receipt**.
- Appeals made against written and final warnings will be heard by the Warning Appeal Committee comprising of 2 governors.

## SCHOOLS CAPABILITY POLICY AND PROCEDURE

- An appeal against a dismissal will be heard by the Staff Dismissal Appeal Committee (comprising 3 Governors) and will be a full hearing where both parties will have an opportunity to present their case. The Committee will usually consist of Governors officially delegated to perform the hearing. No Governor previously involved in any appeal can be considered sufficiently impartial to be a member of the Staff Dismissal Appeal Committee. If there are not sufficient governors available the appeal may be heard by 2 governors – but there should be no fewer than the number that made the initial decision.
- An advisor from Human Resources should advise the committee, but they are not a member of the committee.
- The outcomes from appeals at any stage are
  - To uphold the sanction
  - To overturn the sanction or
  - To impose a lesser sanction
- In cases of dismissal the employee will be removed from the payroll. However, if the appeal is successful and the employee is reinstated, then a full reimbursement of remuneration will be made, i.e. a return to the financial position as if the dismissal never happened.
- Any decision at the appeal stage is pursued on the basis of fact (not balance of probability) and so the committee should expect sufficient factual information at the appeal to justify the decision. It is likely the appeal will focus more on matters of procedure and the level of action. Consideration should be given to how reasonable or unreasonable the original decision was i.e. did the evidence support the conclusion reached?
- The confirmation of the Warning Appeal Committee's decision in respect of outcomes should be given on the day or within 5 working days of the hearing or as soon as possible thereafter. If these time-scales cannot be complied with then every effort must be made to keep the employee informed of any likely delay. The employee should be told that there is no further appeal within this Capability Policy and Procedure against this decision.

# SCHOOLS CAPABILITY POLICY AND PROCEDURE

## CAPABILITY PROCEDURE – APPENDIX 1

