

# ISLE OF WIGHT COUNCIL

## MODEL CAPABILITY PROCEDURE FOR SCHOOL SUPPORT STAFF

### **1. Preamble**

- 1.1 The Governing Body aims to ensure a service delivery of the best possible quality and to achieve this through a flexible and competent workforce. It is therefore essential that proper standards of work performance are achieved and, where an employee's performance is below standard, it is the responsibility of the Headteacher to ensure that the cause is investigated and suitable action taken without delay. Issues of poor performance need to be addressed by the Headteacher and employee jointly, in order that the employee understands the Governing Body's expectations and the Headteacher provides the necessary support and guidance.
- 1.2 This procedure is designed to deal with those cases where an employee is lacking in some area of knowledge, skill or ability and is unable to carry out the required duties to an acceptable standard. Genuine incapability is not misconduct and action taken in accordance with this procedure is intended to improve or correct poor performance at work and not to punish unless it is attributable to a wilful disinclination by the employee in which case the School's disciplinary procedure will apply. The procedure seeks to provide a fair and consistent means of dealing with capability problems without employing the disciplinary procedure and when a caution is given in accordance with this procedure, it is to ensure the employee is aware that his or her performance is below the standard required, what improvements are required and the consequences if the required standard is not reached by the end of the review period.

### **2. Scope of the procedure**

- 2.1 This procedure applies to all the School's Support Staff (i.e. all school staff except teachers).
- 2.2 The procedure does not apply to:
- unsatisfactory performance during a probationary period of service;
  - unsatisfactory performance resulting wholly or mainly from carelessness, negligence, lack of application or wilful disregard for performance standards which will be dealt with under the School's disciplinary procedures;

- lack of capability due to long term or permanent ill-health.

### **3. Time limits**

- 3.1 The time limits referred to in this procedure may be varied by mutual agreement. Review periods must be reasonable and would depend on the nature of the job. In a job where there are few and very simple tasks, a period of a few days may be reasonable, particularly where the lack of capability is in a task which is fundamental to the job. Where the job is complex and effectiveness cannot be assessed in a short time, a review period of several months or longer may be necessary.

### **4. Procedure**

#### **4.1 Informal action**

- 4.1.1 Nothing in this procedure is intended to prevent the normal process of supervisory control whereby a Senior Member of Staff allocates work, monitors performance, draws attention to errors and poor quality and highlights work well done. The Senior Member of Staff must therefore ensure that employees are clear about their duties and responsibilities and the required standards of job performance. Where there is poor or unsatisfactory performance or an instance of inappropriate action, the Senior Member of Staff should point it out to the employee as soon as possible and remind him or her, in a constructive and positive manner, of the standard required.

- 4.1.2 Where the Senior Member of Staff believes that there is a potential problem of poor performance, a meeting should be held with the employee with the purpose of:-

- informing the employee of where and how work performance is below standard;
- giving the employee an opportunity to explain and explore the issue jointly;
- identifying possible reasons;
- arriving at a plan to improve performance to the required standard which may include additional supervision and training.
- determining a date for a review of performance providing a reasonable period for the employee to improve and reach the standard required.

#### **4.2 Formal action - Stage 1**

- 4.2.1 Where the Senior Member of Staff believes that a more serious case of lack of capability exists, or where previous poor performance has not responded to informal action, a formal meeting with the employee should be arranged. The Senior Member of Staff will write to the employee at least five working days in advance of the meeting setting out the

reason for the meeting and advising the employee that he or she has a right to be represented at the meeting by a trade union representative or work colleague who may speak on their behalf.

4.2.2 At the meeting the Senior Member of Staff will;

- set out the standards of work performance expected of the employee
- explain how the employee's performance has fallen short of what is required and the impact of this on service delivery
- confirm that any informal measures have failed to improve performance to the level required
- provide the employee with an opportunity to explain and/or give reasons why the Senior Member of Staff should not consider that performance has been poor
- discuss the way forward and ensure suitable targets and a plan of action are drawn up to include consideration of additional supervision and training
- set a review date which allows for regular updating to the employee on progress being made and gives a reasonable period of time for the employee to improve and meet the standards of performance required
- if not satisfied with the explanation offered by the employee for his or her poor performance, caution the employee that if they fail to reach the required standard during the course of the review period, and that if there is subsequently no significant improvement in performance, the employee's contract of employment may ultimately be terminated on the grounds of capability

4.2.3 After the meeting the Senior Member of Staff will confirm in writing to the employee within five working days, the action to be taken following the meeting. The letter will state;

- the areas where improvement is required
- the level of improvement necessary to achieve the standard required
- the measures that will be made available to assist the employee to achieve the level of improvement or help to resolve the situation
- the consequences if performance does not reach a satisfactory level within the review period
- the employee's right of appeal

4.2.4 The Senior Member of Staff will closely monitor the employee's progress during the review period. Performance should be assessed as objectively as possible and as often as is considered appropriate. The employee will be kept informed of his or her progress. If there is a failure to improve to an acceptable level, the Senior Member of Staff must tell

the employee how they are not meeting the requirements and should give them an opportunity to explain. The Senior Member of Staff may extend the review period if he or she considers this would benefit the employee.

4.2.5 If performance is assessed as satisfactory at the end of the review period, the Senior Member of Staff will inform the employee of the outcome of the review and confirm this in writing.

4.2.6 If performance has not reached the required level at the end of the review period (or earlier if there is clearly no progress towards improvement or a deterioration) the Senior Member of Staff will hold a further formal meeting with the employee and his or her representative to explain to the employee why the matter is to be referred to the Headteacher for consideration of dismissal.

### **4.3 Formal action - Stage 2**

4.3.1 A Hearing will be arranged, giving the employee at least five working days notice, in writing, of the date, time, venue and purpose of the meeting. The hearing will be conducted in accordance with Appendix I. The employee must be provided with all management documentation and advised that a possible outcome of the hearing is dismissal from the School's service. The employee may be represented at the hearing by his or her trade union representative or a work colleague. At the hearing the Senior Member of Staff will set out the events which have led to this stage indicating;

- the areas where the employee has failed to meet the required standards
- the consequences, for the service area, of the employee's poor performance
- the action taken to assist the employee

4.3.2 On completion of the hearing, the Headteacher will announce her/his decision. The possible outcomes may be to;

- take no further action
- provide the employee with a further period of review to determine whether the employee can meet the standards of performance set by management. Where this occurs the employee will be informed that failure to reach a satisfactory level of performance will lead to a further hearing, at which the Headteacher will consider dismissal.
- redeploy the employee to alternative work which may be available and which it is considered the employee will be able to perform to a satisfactory level. Where such work is available, offered and accepted, the grade, rate of pay and other conditions are those applicable to the new post being offered and there will be no period of salary protection.
- Recommend dismissal of the employee and inform the employee of the right of appeal.

Where the Headteacher has previously been directly involved in the procedure which may lead to dismissal the matter will be referred to a Panel of Governors for a decision.

## **5. Appeal**

### **5.1 Appeal against decision**

- 5.1.1 Where a formal hearing has taken place and the employee wishes to exercise his or her right against the decision, the appeal must be made in writing to the Clerk to the Governing Body within ten working days of receipt of written notification. The written notice of appeal must make clear whether the employee is appealing against the propriety of the process which lead to the decision and/or the action decided upon.
- 5.1.2 The appeal will be heard by an Appeals Committee comprising of three governors, who have not so far been involved in the case. The employee shall be given not less than five working days notice of the date, time and venue of the meeting of the Appeals Committee. The appeal shall be conducted in accordance with the Appendix I.
- 5.1.3 The Appeal Committee's decision shall be final and no further right of appeal will be available to the employee.

## **6 Notification to the Director for Children and Young People of a decision to dismiss an employee**

- 6.1 Where the Headteacher of a Committee of Governors has determined in accordance with paragraph 4 that an employee shall be dismissed the Clerk to the Governing Body shall notify the Director for Children and Young People in writing as soon as possible of the determination with the reasons.
- 6.2 Unless the employee has resigned and ceased to work at the school, the Director for Children and Young People shall, within a period of fourteen consecutive calendar days from the receipt of the notification of the determination, write to the employee to terminate his/her employment at the school.
- 6.3 Unless the cause of the termination is gross misconduct or other cause warranting summary dismissal the period of notice to be given shall be that required in accordance with the employee's conditions of service. Where the cause of the determination is gross misconduct or other cause warranting summary dismissal, the dismissal shall take effect from the date of the letter sent to the employee to terminate his/her contract of employment in accordance with paragraph 6.2 above.
- 6.4 If an appeal against the decision to terminate the employment reverses the decision the withdrawal or termination of notice may be rescinded. In cases where the contract is terminated without notice because of the conduct of the member of staff in question, the termination may be rescinded if an appeal is upheld.

## **7 General**

## **7.1 Gross or irredeemable incapability/incompetence**

- 7.1.1 In exceptional circumstances there may be cases of incapability or incompetence which are sufficiently serious to make future employment impossible eg actions by an employee which create an immediate danger to other employees or the public or a failure to follow instructions, procedures or guidelines which may have serious implications for the School. In such cases the Headteacher must satisfy him or herself that the actions of the employee are not misconduct and therefore a matter to be dealt with under the School's disciplinary procedure.
- 7.1.2 It may be appropriate to consider suspending the employee prior to an investigation and formal hearing. However, consideration should be given as to whether the alleged gross incapability or incompetence means that the employee cannot be allowed to work on any other duties. If it is possible to find alternative or reduced duties then this option should be taken as opposed to suspension.

## **8 Provisions applying to trade union representatives**

- 8.1 Where a trade union representative's work performance as an employee is considered to be unsatisfactory, no formal interview shall be arranged to discuss the matter until the circumstances of the case have been discussed with a full-time official of the trade union of which the employee is a representative.

## **9 Confidentiality**

- 9.1 Any records maintained during this procedure shall be carefully safeguarded and treated as confidential.

## **CONDUCT OF HEARINGS OF GOVERNORS**

All cases coming before the Headteacher or an Appeals Committee shall be conducted in accordance with the stages set out below:-

- Stage 1** The Senior Member of Staff to present the case in the presence of the employee and his/her representative including, as the Senior Member of Staff considers appropriate, by:
- (a) reference to the written statements and other written evidence;
  - (b) the calling of witnesses.
- Stage 2** The employee (or his/her representative) to have the opportunity to ask questions on the evidence given by the Senior Member of Staff and any witnesses, as they are called.
- Stage 3** The Appeals Committee hearing the case to have the opportunity to ask questions on the evidence given by the Senior Member of Staff and witnesses, as they are called.
- Stage 4** The employee (or his/her representative) to put his/her case in the presence of the Senior Member of Staff including at the discretion of the employee by:
- (a) reference to the written statements and other written evidence;
  - (b) the calling of witnesses.
- Stage 5** The Senior Member of Staff to have the opportunity to ask questions on the evidence given by the employee and witnesses, as they are called.
- Stage 6** The Appeals Committee hearing the case to have the opportunity to ask questions on the evidence given by the employee and witnesses, as they are called.
- Stage 7** The Senior Member of Staff and then the employee (or his/her representative) to have the opportunity to sum up their cases if they so wish.
- Stage 8** The Senior Member of Staff and the employee (and his/her representative) and any witnesses to withdraw.
- Stage 9** The Committee (with any adviser(s)) to deliberate in private, only recalling the Senior Member of Staff and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding only one is concerned with the point giving rise to doubt.
- Stage 10** The decision of the Appeals Committee will be notified to the employee and his/her representative as soon as possible and will be confirmed in writing within five working days of the meeting by the Clerk to the Governors.