

Procedure for the Management of Unacceptable Performance within Schools

Improving staff performance positively impacts on service delivery within schools and colleges

The Procedure for the Management of Unacceptable Performance sets out a fair and systematic approach to address shortfalls in employees' performance. This policy applies to both teaching and support staff within schools/colleges who have more than one years service.

Key points

- There is an agreed procedure for managing unacceptable performance that must be followed
- It is important to manage performance in a fair and consistent way
- Headteachers/principals and line managers are responsible for managing performance with support from Professional Services, Personnel and Training
- The overall objective is for the manager to assist the employee in the most appropriate way to improve their performance in their current post
- Incidents of unacceptable performance should be identified and dealt with as soon as possible, preferably in an informal way

1. What is unacceptable performance?

- 1.1 It is performance that falls below the standards that have been set or that could reasonably be expected of a member of staff. Under the Employment Rights Act 1996 an employee's performance can be assessed by reference to skill, aptitude, ability and/or any other physical or mental capacity, for example, lack of skill or ability in achieving business objectives such as frequent errors in work.

2. How does it differ from discipline?

- 2.1 In the beginning it may not be clear whether the problem is due to misconduct or unacceptable performance. If it is misconduct then the manager will need to refer to the Disciplinary Procedure. If a case is initially dealt with under the Disciplinary Procedure it should be transferred to the Procedure for the Management of Unacceptable Performance immediately it becomes clear that performance issues are involved.

3. Who is responsible for managing the process?

- 3.1 The headteacher/principal or a delegated member of the senior management team. In the case of the unacceptable performance of a headteacher/principal the responsibility lies with the chair of governors. For clarity within this policy the delegated manager's role is referred to as headteacher/principal throughout.

NB If the school has delegated to the headteacher/principal the authority to make the initial dismissal decision, it will be more appropriate, where possible, for another member of the senior management team to manage the process.

4. What if an employee's health is affecting their performance?

- 4.1 If it is clear that an employee's health is affecting their attendance at work and/or their performance, the headteacher/principal should contact Professional Services, Personnel and Training for advice and refer to the Management of Attendance Procedure.
- 4.2 The headteacher/principal may need to consider whether an employee is covered under the Disability Discrimination Act 1995 (DDA) and therefore whether reasonable adjustments need to be made. Guidance and advice on the DDA is available from Professional Services, Personnel and Training.
- 4.3 Where an employee's health is a factor in his/her poor performance at work, careful consideration should therefore be given to any health related problems. The County Medical Adviser is available to assist. In addition, employees may become unwell during a period of performance monitoring. In that event, consideration would need to be given to establish how matters should be taken forward. In normal circumstances, it would be expected that the process would resume or that, on the employee's return to duty, move to the next stage in the procedure.
- 4.4 Where such sickness absence occurs during stage 3 of this procedure, any absence may count against the period of time allowed for significant and rapid improvement in performance. This means that it may be necessary to consider dismissal at the end of the period of time identified for improvement in performance irrespective of whether or not the employee has attended for work during that time.

5. Why is it important to manage unacceptable performance?

- 5.1 It is important to manage unacceptable performance because of the impact on the individual, the pupils and the school as a whole:
 - pupil's education can suffer as a result of unacceptable performance
 - team morale within the school may dip when a member of staff is not performing
 - if unacceptable performance is not managed, it can waste valuable time and energy for managers to rectify the situation.

6. Who is covered by the procedure?

- 6.1 The procedure applies to all employees, both teachers and support staff within the school/college; however employees who are not teachers, who have less than one year's continuous service, will have their performance monitored under the **Supported Introduction to Employment Policy** that operates in the first year of employment.

7. Can an individual grievance be raised during this process?

- 7.1 In the event that an employee raises a grievance in the course of implementing this procedure, or there remains an outstanding grievance, the school will normally suspend consideration of the grievance until the outcome of

implementing this procedure is known. Each case will, however, be considered on its merits to ensure that the school/college is acting reasonably.

8. Accredited trade union representatives

- 8.1 Formal action for alleged incompetence against an accredited union representative can lead to a dispute if it is seen as an attack on the functions of a trade union. Therefore, although normal standards shall apply to trade union representatives as employees, formal action under this procedure will not be taken against accredited representatives without the circumstances of the case first being discussed with a senior trade union representative or full-time official.

9. Who can offer support to the employee during the process?

- 9.1 If at anytime during this process the employee wishes to seek counselling they can do so from the Staff Counselling Service on 01273 481738. This is a confidential service.

10. Representation

- 10.1 Employees may be accompanied by a recognised trade union representative or work-place colleague, not acting in a professional capacity, at all formal stages of this procedure. There is no right to legal representation at any stage of this procedure.
- 10.2 The headteacher/principal should inform an employee in writing that they may be accompanied if the formal stage of this procedure has commenced. It is the responsibility of each employee to arrange their own representation.

11. The informal process

- 11.1 Normally this part of the process should last 6 weeks.
- All cases of poor performance should normally be dealt with informally in the first instance, making it clear to the employee that they are under the informal part of this policy.
- 11.2 However in some circumstances it will however be appropriate to move straight to one of the formal stages. The decision to dispense with the informal stage of the process should be made by the headteacher/principal in conjunction with advice from personnel and having heard representations from the employee. Examples of the kind of behaviour that can lead to the process starting at one of the formal stages are as follows:
- where an employee's performance has already been reviewed as part of this procedure, only for it to deteriorate again in a relatively short period of time
 - if the health and safety of pupils or staff is put at risk
 - if issues come to light that evidence that the education of the pupils is being put in jeopardy, then the procedure will automatically commence at stage three. Where this is the case, the school/college will provide evidence to support the decision, which will include an explanation as to why the problem was not noticed at an earlier stage.

NB this is not intended to be an exhaustive list:

- 11.3 It is essential that the headteacher/principal ensures that the employee is aware that they are being monitored informally under this policy.
- 11.4 If the headteacher/principal, taking into account all the relevant information available concerning the employee's work, is concerned that an employee's performance is below a satisfactory level, then they must commence informal monitoring of the employee's performance.
- 11.5 Meetings need to be arranged in advance with the employee and sufficient time set aside for the purpose. Meetings need to be held in confidence in an appropriate area of the school that ensures sufficient privacy and to avoid interruption. Consideration should be given to holding the meeting at a neutral venue if appropriate. Notes of the meeting should be taken and shared with the employee concerned. The meetings should include:
- identifying areas of performance which are of concern
 - allowing the employee to comment, express views or offer an explanation
 - consideration should be given to any professional, personal or domestic circumstances which may be affecting the employee's performance
 - seeking to agree a programme of action designed to improve performance
 - identifying an appropriate time scale. Normally a period of 6 weeks should be allowed with review meetings at 3 and 6 weeks. If at 6 weeks there are still issues, then formal monitoring should commence
 - oral feedback should be given as soon as possible of any kind of observation of the employee undertaking his/her work and confirmed in writing within a reasonable period of time
 - lesson observations should be carried out in accordance with the protocol produced by the School Improvement Service.
- 11.6 Review meetings – normally at 3 and 6 weeks
- Review meetings should determine whether or not there has been an improvement in the areas of performance identified as causing concern and in establishing whether or not, while under monitoring, other areas of concern have emerged. The programme for monitoring and support should be reviewed and a decision made as to whether or not:
- informal monitoring and support should be discontinued because of the achievement of satisfactory performance
 - informal monitoring and support should continue
 - the formal monitoring procedure should commence.
- 11.7 Arrangements for the support and monitoring programme might include one or more of the following:
- direct supervision/support from an appropriate member of staff within the school
 - support and monitoring visits by an advisor (or other external support adviser) to undertake a range of support to be determined by the advisor concerned in consultation with the headteacher/principal and the employee
 - an opportunity to observe other colleague's practices within the school

- an opportunity to visit other education establishments identified as being appropriate centres of good practice
- attend training sessions
- the provisions of written guidance and/or programmes of work.

NB For employees who only work in term time, the proceedings must be suspended over the school holidays.

12. Formal procedure

- 12.1 When a headteacher/principal considers that an employee is not performing to the appropriate standard and informal discussions have not resulted in improvement, or the matter is serious enough to miss out the informal stages, then the headteacher/principal should commence formal monitoring.
- 12.2 Full and detailed records should be kept by the headteacher/principal at each stage of the procedure identifying the reasons for the employee's failure to meet the required standards of performance. The headteacher/principal's response and any action should be logged and dated to ensure timescales are adhered to. Notes of all meetings should be kept and made available to the employee. The headteacher/principal dealing with performance issues at the formal stages of this procedure should seek advice from Professional Services, Personnel and Training.
- 12.3 At all stages of the formal process the employee is entitled to three working days notice of any meetings and has the right to accompaniment, as detailed earlier in the policy.
- 12.4 The process has three formal stages:
- 12.5 **Stage one – 6 weeks duration in total**

The discussion should be full and wide-ranging in an environment of support. The employee's poor performance must be identified clearly and openly. If documentary evidence is available, it must be discussed with the employee and copies made available. The employee's explanations must be considered and explored to determine precise reasons for unacceptable performance.

The headteacher/principal needs to agree and then confirm in writing the standard of work expected, the improvement needed and the appropriate action and time scale for achieving this. Targets for both short term and long term improvements should be included. A timetable of regular monitoring sessions with the headteacher/principal will be arranged. These sessions may coincide with or replace normal or existing supervision arrangements.

The concerns and arrangements should be confirmed in writing and the employee may respond in writing to any points made.

The timetable will include two formal review meetings (usually after 3 and 6 weeks) to discuss and recognise progress, identify any further concerns not previously identified and review the support and monitoring programme.

First review meeting – at three weeks

If there are any further concerns these must be identified at the meeting, the support and monitoring in place should be reviewed. Any progress made should be discussed and recognised with the employee.

The outcomes of the meeting should be confirmed in writing and the employee has the right to be accompanied and has the right to respond to any points raised in writing.

Second review meeting – at six weeks

In the meeting, the headteacher/principal should consider any representations made by the employee and then in conjunction with the results of the monitoring and support, determine whether or not satisfactory progress has been made.

If satisfactory progress has been made and the employee achieves the required improvement by the specified date, they will be informed in writing, the formal performance monitoring will cease and any ongoing support through management supervision will be clarified. If however, there is a recurrence of the unacceptable performance within 12 months of ceasing the performance monitoring, then it will be appropriate to re-enter this procedure at stage two.

If satisfactory progress has not been made, then the headteacher/principal should issue a formal warning to the employee and move to stage two of the formal process. The employee does have the right to appeal such a warning. Any appeal must be made in writing within three working days of the date on which the written warning was received. The appeal to the warning is to be heard by an appeal body authorised for such a purpose. The formal warning issued at stage one will remain live for a period of 12 months.

Alternatively, the headteacher/principal may extend the period of monitoring and support at stage one, or return to informal monitoring and/or normal management supervision.

12.6 Stage two – 6 weeks duration in total

Stage two is the same as stage one, with review meetings at three and six weeks.

The results of stage one and the monitoring process will be fully discussed with the employee and reviewed objectively. The employee will give their assessment of the progress achieved, and the support and training made available during stage one.

The headteacher/principal will consider how far performance has improved, whether it has been sustained and the shortfall(s) against the target(s) set during stage one. A new action plan will be identified, agreed and confirmed in writing clearly outlining targets to be achieved in order to bring the level of performance up to an acceptable standard during stage two.

Again, a timetable of regular monitoring sessions with the headteacher/principal should be arranged to include a further two formal review meetings (usually after three and six weeks) to discuss progress and review the monitoring and support programme.

First review meeting – at three weeks

Again, the process is the same at stage one with the first review meeting being held at three weeks. The same outline structure of meeting should be followed as at stage one.

Second review meeting – at six weeks

Again the process is the same at stage one with the second review meeting being held at six weeks. The same outline structure of meeting should be followed as at stage one.

If satisfactory progress has been made and the employee achieves the required improvement by the specified date, they will be informed in writing, the formal performance monitoring will cease and any ongoing support through management supervision will be clarified. The formal warning issued at stage one will remain live for a period of 12 months. If there is a recurrence of the unacceptable performance within 12 months then it will be appropriate to re-enter this procedure at stage two.

After the second formal review meeting at stage two, if the employee is still underperforming, the headteacher/principal should issue a formal warning in writing, that the performance continues to be unsatisfactory and that failure to improve could lead to their dismissal. This warning will remain live for 18 months. If there is a recurrence of the unacceptable performance within 18 months, then it will be appropriate to re-enter this procedure at stage three.

The employee has the right of appeal against this warning. Any appeal must be made in writing to the headteacher/principal within three working days of the date on which the written warning was received. The appeal will be heard by an appeal body authorised for this purpose.

Alternatively the headteacher/principal may extend the period of monitoring and support at stage two or return to informal monitoring and/or normal management supervision.

12.7 Stage three – 4 weeks duration in total

A formal meeting should be convened to outline concerns and emphasise the seriousness of the situation. A final programme of support and monitoring should be discussed and agreed, emphasising that significant and rapid improvement in performance is required.

A final review meeting should be arranged (usually after 4 weeks).

The format of the meeting will be as at stages one and two and the employee has the right to be accompanied.

Final review – at four weeks

The format is the same as the review meetings at stage one and two.

The purpose of the final formal review meeting will be to determine whether or not satisfactory progress has been made. If yes, then the employee will be informed in writing and any ongoing support through management supervision will be clarified. The formal warning issued at stage two will remain live for a period of 18 months. If there is a recurrence of the unacceptable performance within 18 months, then it will be appropriate to re-enter this procedure at stage three.

If the employee's performance remains unacceptable, a decision may be taken to recommend the employee's dismissal on the grounds of capability. If this is the case then the employee should be suspended (with pay) pending the dismissal hearing, which should be arranged as soon as possible following the final review meeting.

13. Dismissal hearing due to unacceptable performance

- 13.1 Where it is decided to refer the case to a dismissal or appeal hearing, the employee will be given at least ten full working days notice, or a shorter period as may be mutually agreed.
- 13.2 At the same time (i.e. ten working days in advance) the employee is to be supplied with the management statement of case and any supporting information, including witness statement, which will be referred to at the meeting, and the details of any witnesses (if applicable) that are to be called.
- 13.3 The employee is required to submit their statement of case, supporting information including witness statement, which will be referred to at the meeting, and the details of any witnesses (if applicable) that are to be called five full working days before the hearing.
- 13.4 All paperwork will therefore be circulated to both parties involved, at least five working days before the dismissal hearing, as no additional written documentation will be accepted as evidence on the day.

14. Attendance at the dismissal hearing

- 14.1 If the school has given delegated powers of dismissal to the headteacher/principal, then the headteacher/principal accompanied by a personnel practitioner will hear the case. Alternatively the dismissal hearing will be heard by a panel of three governors accompanied by a personnel practitioner.
- 14.2 The employee will attend the hearing and is entitled to be accompanied by a trade union representative or workplace colleague. There is no right to legal accompaniment.
- 14.3 If the employee is unable to attend the hearing, an alternative date will be arranged, ideally within five working days of the first date. If they are unable to attend that hearing it will be held in their absence, but a representative will be given the opportunity to present the employee's case on their behalf.

15. Witnesses

- 15.1 As detailed above, the identity of the witnesses must be disclosed to the other side in advance; it is preferable that witnesses who have made statements attend the hearing, although this cannot be mandatory if they are not a County Council employee.
- 15.2 Each witness will join the hearing to give evidence and leave after doing so, although they may need to be recalled if necessary.

16. Role of the panel

- 16.1 The role of the panel is to listen to the evidence and to decide what action they wish to take. It is important that governors remember that the degree of proof is on the balance of probability that there is reasonable belief that the performance of the employee is unacceptable and has not shown the required improvement to reach a satisfactory level.
- 16.2 The employee's record with the school/college and the County Council should be taken into consideration, including any disciplinary record. The employee's position in terms of status and length of service might be considered in mitigation and could influence the level of sanction. A consistent approach must be used.

17. The format of the meeting

- 17.1 Normally the following stages would be followed at the hearing, this assumes that the headteacher/principal presents the case to a panel of governors.

Stage	Event
Welcome and Detail of events	The chair of the panel hearing the case for dismissal, will make introductions and outline the process to be followed to ensure that everyone present understands what is going to happen The headteacher/principal will be advised throughout the hearing by a personnel practitioner. The personnel practitioner will take notes of the meeting which will be available to all parties present.
1	The headteacher/principal presents the case in the presence of the employee and his/her representative. This includes as appropriate: <ul style="list-style-type: none"> • referring to the written documents and other written evidence • the calling of witnesses.
2	The employee (or his/her representative) has the opportunity to ask questions on the evidence given by the headteacher/principal, and of any witnesses, as they are called.
3	The panel of governors hearing the case have the opportunity to ask questions on the evidence given by the headteacher/principal, and of any witnesses as they are called.
4	The employee (or his/her representative) puts forward his/her case in the presence of the headteacher/principal. This includes as appropriate: <ul style="list-style-type: none"> • referring to the written documents and other written evidence • the calling of witnesses.
5	The headteacher/principal has the opportunity to ask questions on the evidence given by the employee, and of any witnesses called, as they are called
6	The panel of governors hearing the case have the opportunity to ask questions on the evidence given by the employee, and of any witnesses called, as they are called.
7	The headteacher/principal sums up their case
8	The employee sum up their case

9	The headteacher/principal and employee plus representatives and all witnesses withdraw from the hearing
10	Adjournment for panel to consider their decision, they must deliberate in private with their advisor. The panel may recall the headteacher/principal or the employee to clarify uncertain points, however if recall is necessary both parties must return, even if one is not required for clarification of points.
11	<p>The decision of the panel of governors will be notified to the employee at the meeting and then confirmed in writing within 5 working days of the meeting</p> <p>The Panel need to:</p> <ul style="list-style-type: none"> • confirm the decision made • the reasons why this decision was reached • give details of how the employee may appeal against the decision.

NB the panel can choose to adjourn at any point and can consider requests from either side to do likewise.

18. The decision of the panel

18.1 The panel of governors hearing the case may make one of the following decisions:

1. determine that the employee should cease to work in his/her present post at the school and be dismissed
2. determine that the employee should cease to work in his/her present post in the school but offer employment in another post at the school. This might be at a lower salary level in which case the question of salary protection should be considered
3. determine that the employee should continue to undergo formal performance monitoring for a defined period of time
4. take no formal action.

18.2 If the dismissal is confirmed then the employee will be given contractual notice on full pay, the employee should be told not to attend work during the notice period.

19. The Appeal process

19.1 An employee may appeal against dismissal under this procedure, in writing within 5 working days of receipt of the written decision; the reason for the appeal must be clearly stated in the letter.

19.2 A panel of three different governors will hear the appeal; no governors hearing the appeal shall have been involved in the decision to dismiss.

19.3 Within 20 working days of receipt of the request for an appeal, arrangements will be made for the appeal to be heard. The employee must be given ten working days notice of the date of the appeal hearing, unless a shorter period is mutually agreed.

19.4 The format of the meeting is the same as are the deadlines for the sharing of paperwork and details of how witnesses may be called.

20. The decision of the appeal panel

- 20.1 The panel of governors hearing the appeal can decide to either **confirm or quash** the decision. If the decision is quashed the panel, in conjunction with personnel advice, should then either:
1. determine that the employee should continue to undergo formal performance monitoring for a defined period of time
 2. take no formal action.
- 20.2 The appeals panel will consider the matter in private and decide whether or not the case against the employee has been substantiated. If further clarification or information is required in order for a decision to be reached, both parties will be recalled or the appeal can be adjourned until the required information is provided.
- 20.3 The employee will normally be asked to wait for the panel's decision. However if the case is a complex one, the employee will be given the opportunity to leave and called back at a later time to receive the decision (accompanied wherever possible by their representative). In any event a decision will be made **within 2 working days** of the conclusion of the appeal hearing.
- 20.4 The decision of the appeals panel is **FINAL** and there is no further right of appeal under this policy.

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