

PHOENIX COLLEGE

Managing Poor Performance Policy - Schools

April 2019



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Document History	
Version	1.2 (see below)
Status	Final
Date	April 2019
Target audience	All school employees
Ratification	Approved at Schools' Joint Forum 20 March 2019
Author	HR Employment Services team

Version control	Reviewers
Version 1.1	Initial draft for schools – February 2019
Version 1.2	Approved at Schools' Joint Forum 20 March 2019 (Next review is due April 2020 or sooner if required by legislation)

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Additional Guidance

- Guidance on the process to be followed at a formal hearing - schools
- Guidance on the process to be followed at an appeal hearing - schools

1. Objectives and scope

- 1.1 The school aims to encourage all of its employees to maintain high standards of performance at work, and managers to pro-actively manage the performance of staff.
- 1.2 The purpose of this policy is to ensure that poor work performance is managed in a timely, effective, fair, consistent and supportive way in order to help employees achieve the required standard. This policy provides a constructive and standardised framework to support managers in intervening where poor performance has been identified.
- 1.3 The School will ensure that staff are given the opportunity to improve and are provided with support and training, where appropriate, to help them reach the required level of performance.
- 1.4 All members of staff need to be clear what is expected of them in their role and have clear objectives set at their performance management/appraisal meetings, as well as regular feedback on their performance at 1-1/supervision meetings and regular management interactions throughout the year.
- 1.5 The Schools defines poor performance as (see also section 3.4):

“The gap between the School’s expectations of the job holder in respect of their job role, as defined by the job description, person specification, relevant professional standards, and objectives, and the employee’s actual performance in their job.”
- 1.6 Where poor performance is due to behaviour which indicates a deliberate or wilful lack of care and attention, or negligence, the School Disciplinary Policy should be followed. Concerns about an employee’s capability which are the result of sickness absence or related to a long term health condition should be dealt with under the School’s Managing Sickness Absence Policy.
- 1.7 This policy applies to all those working in the School, including those on permanent, temporary or part-time contracts, job sharers, and individuals on non-standard terms of employment.
- 1.8 The policy does not apply to:
 - employees in their probation period (covered by the [Probation Scheme](#))
- 1.9 The following important principles are encompassed within this policy:
 - it is based on established case law and has been agreed between the School and the recognised trade unions
 - it will not contradict any current or future national agreement
 - staff will be informed of the School policy, in particular through the induction process.
 - staff will be informed of the standards expected of them

- an employee will be given an opportunity to state their case before any decision is reached
- the informal process will have been exhausted before the formal procedure is initiated
- an employee may be accompanied by a trade union representative or a work colleague
- there will be a right of appeal against formal action taken
- the LA HR team must be consulted at all formal stages of the procedure and must be in attendance at hearings where dismissal is being considered

2. Responsibilities

2.1 Employees will:

- ensure that they perform the tasks and responsibilities of their role to the best of their ability seeking to achieve the standards of performance required by the School;
- bring to their managers attention any issues which may affect their performance as soon as they occur, so support, if appropriate, can be given;
- raise training and development issues with their line manager as part of their appraisal and one to ones;
- co-operate with any discussions or reviews in to their poor work performance;
- Co-operate with any training or support offered to assist in bringing their performance up to the standard required.

2.2 Managers will:

- ensure that new staff are properly inducted into the School and work area;
- make rigorous use of the [Probation Scheme](#) to ensure new employees have the right capabilities, attitudes and behaviour;
- ensure that all staff have a job description and person specification which reflects what is required in their role and is reviewed and updated as necessary;
- that all staff are appraised on an annual basis, ensuring that staff are given clear SMART (specific, measurable, achievable, realistic, time bound) objectives and have a Personal Development Plan (PDP) which supports their development;
- ensure that staff have regular feedback on their performance through one to ones , that the standards expected are clear, have been effectively communicated and are consistent with other like roles;
- bring any concerns about an employee's performance to their attention as soon as the issue becomes apparent;
- establish the reasons for the poor performance, where an investigation is required ensuring this is undertaken in a fair and timely manner;
- ensure that corrective informal action is taken where appropriate;
- seek advice from HR where it is likely that action will be taken under the formal stages of the Managing Poor Performance Policy.

2.3 Where it is the Headteacher who is underperforming, it is recommended that the Managing Poor performance procedure is led by an officer of the Local Authority,

appointed by the DCS, and that the Chair of Governors should be jointly involved. In cases such as this, where the text refers to Headteacher, this should be substituted for the nominated LA officer.

3. Informal management of poor performance

- 3.1 Informal action should be used in the first instance to improve performance before formal action is considered. It is anticipated that the majority of poor performance issues will be dealt with informally.
- 3.2 The exception will be where unsatisfactory performance is sufficiently serious to warrant bypassing the informal stage altogether (see 4.6 below).
- 3.3 Line managers are best placed to talk to their employees, to listen to their concerns, coach and support them, and check they meet their targets, as well as ensuring they are engaged and committed.
- 3.4 Before considering formal action for poor performance, managers should consider the following:
- Are the workload, duties and responsibilities, within the range of reasonable expectations for the individual's role, and if the employee has raised concerns about these issues, have they been given reasonable consideration?
 - Does the individual understand their job duties/responsibilities?
 - Are there any other external factors in the work environment which may be impacting on performance, like organisational change or poor work relationships?
 - Are there any personal issues that may be temporarily impacting on performance?
 - Are there any health issues affecting performance and has Occupational Health advice been obtained/any suitable adjustments been implemented and monitored?
 - Does the individual have access to the appropriate equipment/resources/facilities to carry out their role?
 - Have they been provided with adequate personal development, including training, learning and development and on the job coaching?
 - Has the annual appraisal taken place and have SMART performance targets been set?
 - Have they received an appropriate level of supervision and/or regular feedback?
 - Has the individual been made aware their level of performance is unacceptable?
 - is there any evidence that poor performance is the result of a lack of motivation, poor attitude or the employee choosing not to perform (which may be better dealt with under the School Disciplinary Policy)
- 3.5 Having considered the potential causes of poor performance, managers should remedy any issues within their control that are impacting on performance, and escalate any issues to a more senior manager for resolution if required. This should

be formally recorded at the next one to one and appraisal and as appropriate in a letter to the individual.

- 3.6 Informal action is part of the normal discussions between employees and their managers. It is not part of the formal Managing Poor Performance Policy and as a result, individuals are not entitled to representation at any meetings to discuss their performance at the informal stage, although they may find it helpful to seek advice and support from a trade union representative or a fellow employee.

4. Formal management of poor performance

4.1 Initial meeting

- 4.1.1 If, having taken reasonable steps to address the performance issues under the informal stages of this policy, performance still remains poor; the Headteacher must arrange a formal meeting with the employee to discuss their performance. The Headteacher will seek HR advice and attendance at meetings under the formal stage.
- 4.1.2 Where the Managing Poor Performance Policy is to be applied to accredited trade union representatives, no formal action should be taken until the case has been discussed with a full-time trade union representative of the recognised trade union who is employed by the **Council**, or an official employed by the recognised trade union.
- 4.1.3 An invitation to an initial meeting under the formal stages of this policy must be in writing, setting out the date, time and location of the meeting, giving a minimum of five working days' notice. It should also set out a clear explanation of the reasons for calling the performance meeting and the possible outcomes.
- 4.1.4 The letter must also state that the employee has the right to be accompanied at the meeting by a Trade Union representative or workplace colleague. Reasonable adjustments may be needed for a worker with a disability (and possibly for their companion if they are disabled). For example the provision of a support worker or advocate with knowledge of the disability and its effect, in addition to the right to be accompanied by a fellow worker or a trade union representative. The employee must tell the School whether they will be accompanied at least three working days before the meeting.
- 4.1.5 If the representative cannot attend on the proposed date for a meeting, an alternative representative should be nominated or the meeting re-arranged to a time and date which is no more than five working days after the original date. The School is obliged to rearrange the meeting only once; however, if an alternative date is proposed by the employee, it will not be unreasonably refused. It is the responsibility of individual employees to arrange representation and if this cannot be arranged within the timescales set out above, and there are no extraordinary or mitigating circumstances, then the manager should proceed with the scheduled meeting.

- 4.1.6 The **School** considers it is good practice to allow the chosen companion to participate as fully as possible in the meeting. However the companion will not answer questions on the individual's behalf, or address the meeting if the individual does not wish it.
- 4.1.7 If the employee is not accompanied, the manager will check that they understand they have the right to be. If they decline to be accompanied, a note will be made to that effect.
- 4.1.8 The intent of the initial meeting is to try and understand why the problem exists and what (if any) the trigger was for the poor performance. The tone of the meeting should be consensual, seeking to understand the situation and to come up with a joint solution.
- 4.1.9 The manager will clearly explain the issues/problems and consequences of poor performance (see section 3.4 for guidance on what should be covered). This will include clear examples of where the performance has not met the required standard.
- 4.1.10 The employee will be given an opportunity to respond to any criticisms of his/her performance and to put forward any explanation he/she may have for the matters identified by the manager as amounting to poor performance.
- 4.1.11 The outcome of the initial meeting may be:
- a decision to take no further action;
 - the implementation of an improvement plan, designed to bring the employee's performance up to an acceptable level, and the issue of a first written warning;
 - a decision to refer the matter for investigation under the Disciplinary Policy;
- 4.1.12 The outcome of the meeting will be confirmed in writing to the employee within three working days of the meeting. If appropriate, it will include a first written warning that performance is currently not acceptable. It will warn of the possible consequences of failure to reach the satisfactory improvement level/standards (i.e. progression to the next stage of this policy which could result in a final written warning and ultimately to dismissal). The first written warning will be live for six months from the date it is issued. If appropriate, the letter will also confirm the employee's right to appeal against the decision to issue a first written warning (see 4.5 below).
- 4.1.13 If appropriate, the letter will include details of the improvement plan which will set out:
- the improvement required and timescale within which it is to be achieved i.e. 6 – 8 weeks
 - any further investigation into health issues and any reasonable adjustments that may assist improvement
 - the support arrangements agreed including the additional supervision and/or training which will be provided during the review period
 - a first written warning
 - the time and date of the first review meeting to discuss the Improvement Plan

4.2 Review meeting

- 4.2.1 At the end of the period of time set out in the Improvement Plan, a review meeting will be held to consider if the employee has reached and maintained the required standard of performance. The invite to the review meeting must be in writing, setting out the date, time and location of the meeting, giving a minimum of five working days' notice. It should also set out a clear explanation of the possible outcomes of the meeting. The employee will have the right to be accompanied to the review meeting by a trade union representative or workplace colleague. The provisions in paragraphs 4.1.3 to 4.1.7 will also apply when arranging the review meeting.
- 4.2.2 The outcome of the first review meeting may be:
- a decision to take no further action;
 - a decision to refer the matter for investigation under the Disciplinary Policy;
 - a further period of monitoring/adjustments to the improvement plan and the issue of a final written warning
 - a decision to explore opportunities for redeployment to an alternative role
- 4.2.3 If the performance has reached a satisfactory standard and been maintained no further action will be taken. However, it may be appropriate to set a further review date to ensure that performance is maintained. The first warning remains live for six months and any further poor performance in that period may lead to a final written warning being issued.
- 4.2.4 It is possible that the employee may be making a concerted effort to improve and has the potential to perform the job satisfactorily, but has not quite reached the standard required. In these circumstances it may be reasonable to review whether the targets are achievable and to extend the duration of the period set for the employee to reach the required standard and adjust timescale and review dates accordingly.
- 4.2.5 If there is limited and/or insufficient improvement, the reasons for the lack of improvement should be investigated further. This will include reviewing whether the targets set are achievable, the intent is again to try and understand why the problem continues to exist.
- 4.2.6 The outcome of the meeting where there has been limited and/or insufficient improvement will be a further period of monitoring, adjustments to the Improvement Plan as appropriate and the issue of a final written warning. The final written warning will be live for 12 months from the date it is issued and will make it clear that failure to reach an acceptable standard of performance within the additional monitoring period, may lead to a capability hearing at which the employee may be dismissed.
- 4.2.7 The outcome of the first review meeting will be confirmed in writing to the employee within three working days of the meeting. If appropriate, the letter will also confirm

the employee's right to appeal against the decision to issue a final written warning (see 4.5 below).

4.3 Alternatives to dismissal

- 4.3.1 If, after a final written warning, the individual has still failed to make sufficient improvement despite being given a reasonable opportunity and support to do so, the possibility of transferring the individual to another job that is more suited to their capabilities should be explored. The employee will need to consent to redeployment and to any possible reductions in grade and salary.
- 4.3.2 If it becomes clear that there are no suitable alternatives or the employee rejects the offer, a capability hearing should be arranged.

4.4 Capability hearing

- 4.4.1 If an employee has been issued with a final written warning under this policy that remains live and the employee's manager believes that his/her performance is still not acceptable, the matter will be referred to a capability hearing.
- 4.4.2 The notice to attend a capability hearing must be in writing, with the letter setting out the date, time and location of the hearing, giving a minimum of five working days' notice. It should also set clearly an explanation of the reason for calling the meeting and possible consequences, which include the employee's dismissal. It must also state that the employee has the right to be accompanied by a Trade Union representative or workplace colleague. The provisions applying to the companion in paragraphs 4.1.3 to 4.1.7 also apply to the capability hearing.
- 4.4.3 The capability hearing will be conducted by a panel of the Governing Body (see paragraph 4.2 of the Disciplinary Policy). The panel will be advised by an HR professional and a note taker will also be present.
- 4.4.4 The purpose of the capability hearing is to consider:
- if there has been a thorough and reasonable investigation into the reasons for the poor performance.
 - if the lack of performance is fully supported by reliable evidence
 - the interventions which have been put into place (where appropriate) to help the employee improve
 - if the timescales for improvement were reasonable
 - the attempts that have been made to explore a transfer to an alternative role
 - the likelihood that a further period of monitoring would lead to acceptable performance (in which case the meeting could be adjourned to enable this)
 - any submissions that the individual or their representative may wish to make
- 4.4.5 If the panel concludes that they reasonably believe in the light of the evidence that the employee's skill set is a poor fit to the role, or if the prospect of the employee improving within a reasonable timescale is unlikely, making them unsuitable for the job with no prospect of that changing, they will dismiss the individual.

4.4.6 The outcome of the hearing will be conveyed in writing within three working days of the capability hearing setting out in full the reasons for their dismissal and their right to appeal. Where the decision to dismiss is made, the dismissal will be with appropriate contractual notice.

4.5 Appeal

4.5.1 An employee who is given a warning or is dismissed under this policy has the right of appeal. The appeal should be sent in writing to the Clerk to Governors setting out the grounds on which the employee believes that the decision was flawed, unfair or the sanction inappropriate (providing supporting evidence where appropriate). The appeal must be made within five working days of receiving written confirmation of the written warning or dismissal.

4.5.2 The appeal will be heard by a panel of the governing body of which the members have not been involved in the decision to impose a warning or dismissal on the employee. The panel will be advised by an HR professional and a note taker will also be present.

4.5.3 Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal. The employee will be entitled to be accompanied by a fellow employee or a trade union official. A guidance note for the process to be followed at the appeal hearing is available in school or from HR.

4.5.4 The appeal panel will consider any representations made by the employee and the employee's companion. They must also consider representations made by the manager who imposed the written warning/dismissal being appealed against.

4.5.5 At the hearing, the decision to impose the sanction will be reviewed and the employee will be entitled to make representations about the appropriateness of that decision.

4.5.6 Upon completion of the appeal, the panel will convey their decision to the employee. The decision will be confirmed in writing within three working days.

4.5.7 The outcome of the appeal is final. There is no further right of appeal.

4.6 Acts of Gross Incapability/Negligence

4.6.1 Where an employee commits an act of gross incapability or gross negligence which is so serious as to endanger the welfare and safety of children, colleagues, parents or other users of the school, or that results in the loss or significant damage to a school asset, a full investigation will take place. While the investigation is being conducted it may be necessary to suspend the employee from duty following the same process used in the Disciplinary Policy (section 8.2).

4.6.2 Where the matter relates to an accredited trade union representative, removal from the workplace and/or suspension if necessary may occur without prior discussion of the case with a full-time trade union representative of the recognised trade union who is employed by the Council, or an official employed by the recognised trade

union (as is the case for all other employees). The LA HR service must be informed of these cases and the appropriate Designated Officer (see section 4.2 of the Disciplinary Policy) must ensure the trade union official is informed as quickly as possible. See also section 4.1.2 of this policy.

- 4.6.3 Should the investigation conclude that it is likely to be an act of gross incapability/negligence (rather than gross misconduct) a formal capability hearing for gross incapability should take place. This may result in the individual being summarily dismissed (i.e. dismissed without notice).

5. Data protection and retention of employee records

- 5.1 The School processes personal data collected during informal action and the formal Managing Poor Performance Policy in accordance with its data protection policy. Such data is held securely and accessed by, and disclosed to, individuals only for the purpose of the Managing Poor Performance Policy. It will be held on an individual's personal record file which is retained for seven years after their date of leaving the school. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's Disciplinary Policy.

